
Delaware Register of Regulations

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Final

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Hearing Notices



Pursuant to 29 **Del.C.** Chapter 11, Subchapter III, this issue of the *Register* contains all documents required to be published, and received, on or before September 15, 2015.

"Fall Harvest"
Fifer Orchards
Camden-Wyoming, Delaware

INFORMATION ABOUT THE DELAWARE REGISTER OF REGULATIONS

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DELAWARE REGISTER OF REGULATIONS

The *Delaware Register of Regulations* is an official State publication established by authority of 69 *Del. Laws*, c. 107 and is published on the first of each month throughout the year.

The *Delaware Register* will publish any regulations that are proposed to be adopted, amended or repealed and any emergency regulations promulgated.

The *Register* will also publish some or all of the following information:

- Governor's Executive Orders
- Governor's Appointments
- Agency Hearing and Meeting Notices
- Other documents considered to be in the public interest.

CITATION TO THE DELAWARE REGISTER

The *Delaware Register of Regulations* is cited by volume, issue, page number and date. An example would be:

16 **DE Reg.** 1227 - 1230 (06/01/13)

Refers to Volume 16, pages 1227 - 1130 of the *Delaware Register* issued on June 1, 2013.

SUBSCRIPTION INFORMATION

The cost of a yearly subscription (12 issues) for the *Delaware Register of Regulations* is \$135.00. Single copies are available at a cost of \$12.00 per issue, including postage. For more information contact the Division of Research at 302-744-4114 or 1-800-282-8545 in Delaware.

CITIZEN PARTICIPATION IN THE REGULATORY PROCESS

Delaware citizens and other interested parties may participate in the process by which administrative regulations are adopted, amended or repealed, and may initiate the process by which the validity and applicability of regulations is determined.

Under 29 **Del.C.** §10115 whenever an agency proposes to formulate, adopt, amend or repeal a regulation, it shall file notice and full text of such proposals, together with copies of the existing regulation being adopted, amended or repealed, with the Registrar for publication in the *Register of Regulations* pursuant to §1134 of this title. The notice shall describe the nature of the proceedings including a brief synopsis of the subject, substance, issues, possible terms of the agency action, a reference to the legal authority of the agency to act, and reference to any other regulations that may be impacted or affected by the proposal, and shall state the manner in which persons may present their views; if in writing, of the place to which and the final date by which such views may be submitted; or if at a public hearing, the date, time and place of the hearing. If a public hearing is to be held, such public hearing shall not be scheduled less than 20 days following publication of notice of the proposal in the *Register of Regulations*. If a public hearing will be held on the proposal, notice of the time, date, place and a summary of the nature of the proposal shall also be published in at least 2 Delaware newspapers of general circulation. The notice shall also be mailed to all persons who have made timely written requests of the agency for advance notice of its regulation-making proceedings.

INFORMATION ABOUT THE DELAWARE REGISTER OF REGULATIONS

The opportunity for public comment shall be held open for a minimum of 30 days after the proposal is published in the *Register of Regulations*. At the conclusion of all hearings and after receipt, within the time allowed, of all written materials, upon all the testimonial and written evidence and information submitted, together with summaries of the evidence and information by subordinates, the agency shall determine whether a regulation should be adopted, amended or repealed and shall issue its conclusion in an order which shall include: (1) A brief summary of the evidence and information submitted; (2) A brief summary of its findings of fact with respect to the evidence and information, except where a rule of procedure is being adopted or amended; (3) A decision to adopt, amend or repeal a regulation or to take no action and the decision shall be supported by its findings on the evidence and information received; (4) The exact text and citation of such regulation adopted, amended or repealed; (5) The effective date of the order; (6) Any other findings or conclusions required by the law under which the agency has authority to act; and (7) The signature of at least a quorum of the agency members.

The effective date of an order which adopts, amends or repeals a regulation shall be not less than 10 days from the date the order adopting, amending or repealing a regulation has been published in its final form in the *Register of Regulations*, unless such adoption, amendment or repeal qualifies as an emergency under §10119.

Any person aggrieved by and claiming the unlawfulness of any regulation may bring an action in the Court for declaratory relief.

No action of an agency with respect to the making or consideration of a proposed adoption, amendment or repeal of a regulation shall be subject to review until final agency action on the proposal has been taken. When any regulation is the subject of an enforcement action in the Court, the lawfulness of such regulation may be reviewed by the Court as a defense in the action.

Except as provided in the preceding section, no judicial review of a regulation is available unless a complaint therefor is filed in the Court within 30 days of the day the agency order with respect to the regulation was published in the *Register of Regulations*.

CLOSING DATES AND ISSUE DATES FOR THE DELAWARE REGISTER OF REGULATIONS

ISSUE DATE	CLOSING DATE	CLOSING TIME
November 1	October 15	4:30 p.m.
December 1	November 16	4:30 p.m.
January 1	December 15	4:30 p.m.
February 1	January 15	4:30 p.m.
March 1	February 16	4:30 p.m.

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Symbol Key

Arial type indicates the text existing prior to the regulation being promulgated. Underlined text indicates new text. Language which is ~~stricken~~ through indicates text being deleted.

Proposed Regulations

Under 29 **Del.C.** §10115 whenever an agency proposes to formulate, adopt, amend or repeal a regulation, it shall file notice and full text of such proposals, together with copies of the existing regulation being adopted, amended or repealed, with the Registrar for publication in the *Register of Regulations* pursuant to §1134 of this title. The notice shall describe the nature of the proceedings including a brief synopsis of the subject, substance, issues, possible terms of the agency action, a reference to the legal authority of the agency to act, and reference to any other regulations that may be impacted or affected by the proposal, and shall state the manner in which persons may present their views; if in writing, of the place to which and the final date by which such views may be submitted; or if at a public hearing, the date, time and place of the hearing. If a public hearing is to be held, such public hearing shall not be scheduled less than 20 days following publication of notice of the proposal in the *Register of Regulations*. If a public hearing will be held on the proposal, notice of the time, date, place and a summary of the nature of the proposal shall also be published in at least 2 Delaware newspapers of general circulation. The notice shall also be mailed to all persons who have made timely written requests of the agency for advance notice of its regulation-making proceedings.

DELAWARE SOLID WASTE AUTHORITY

Statutory Authority: 7 Delaware Code, Section 6403 (7 **Del.C.** §6403)
1 **DE Admin. Code** 501

PUBLIC NOTICE**501 Regulations of the Delaware Solid Waste Authority**

Pursuant to 7 **Delaware Code**, Sections 6403, 6404, 6406 and other pertinent provisions of 7 **Delaware Code**, Chapter 64; the Delaware Solid Waste Authority (“DSWA”) is proposing amendments to the Regulations of the Delaware Solid Waste Authority (the “Regulations”) to modify the Regulations last amended effective September 10, 2013.

Notice of Hearing: A public hearing will be held immediately following the hearing scheduled at 3:00 p.m. November 2, 2015, addressing contemporaneous amendments to the Statewide Solid Waste Management Plan, in the Corporate Training Center, Room 400A, Delaware Technical and Community College Terry Campus, 100 Campus Drive, Dover, DE 19904. The hearing is to provide an opportunity for public comment on the proposed amendments.

Written Comments: The DSWA will receive written comments, suggestions briefs or other written material until the close of business, November 17, 2015. Written comments, suggestions, compilations of data or other written material shall be submitted to Michael D. Parkowski, Chief of Business Services and Government Relations, Delaware Solid Waste Authority, 1128 South Bradford Street, Dover, Delaware 19904. Anyone wishing to obtain a copy of the proposed amendments may obtain a copy from the Delaware Solid Waste Authority, 1128 South Bradford Street, Dover, Delaware 19904, (302) 739-5361.

Summary of Proposed Changes: Pursuant to 7 **Delaware Code**, Chapter 64, the DSWA is authorized to adopt and amend regulations to effectuate the powers, purposes and policies set forth in said Chapter 64. Moreover, the DSWA is expressly authorized, pursuant to 7 **Del.C.** §6422(b) to adopt regulations that have the effect of requiring all owners and occupiers of land in Delaware to use the services and facilities of the DSWA. Consistent with this authority, the proposed amendments will have the effect of requiring most solid waste generated in the State of Delaware to be delivered to a DSWA facility.

Background and Purpose: The Delaware Solid Waste Authority (“DSWA”) was established by the Delaware General Assembly in 1975 as a statewide solid waste authority, a body politic and corporate constituting a public instrumentality of the State created to perform essential public and governmental functions. The findings, policies

and purposes of the enabling legislation recognized among other things the need for the people of the state to have a clean and wholesome environment through the statewide management of solid waste generated in Delaware. Such statewide management includes the establishment of programs for collection and disposal of solid waste and the recovery of and reuse of discarded materials through recycling and beneficial use.

In discharging its responsibility, DSWA undertakes planning, research and development functions utilizing professional technical and management employees, and a support staff. The activities of DSWA are subject to the oversight and control of a seven (7) person Board of Directors, each Director being appointed by the Governor and confirmed by the Senate.

DSWA has been granted the authority to adopt regulations and establish a licensing program for collectors of solid waste. Enforcement powers granted to DSWA include the assessment of civil penalties, license suspension or revocation, and injunctive relief.

In order to fund the comprehensive activities authorized by the General Assembly, DSWA has been empowered to establish user fees for the services it provides and to borrow money through bond financing and otherwise. DSWA receives no State or federal funding, and the full faith and credit of the State is not pledged for any of DSWA's debt. To assure the proper management of solid waste and provide sufficient financial support for its programs, DSWA is authorized to control the collection, transportation, storage and disposal of solid waste throughout the State.

DSWA has been provided extensive authority to utilize services provided by the private sector and to engage in cooperative arrangements with other State entities, counties and municipalities. DSWA has also been charged with establishing an extensive recycling program and a public education program. Included in the recycling initiative is the removal of materials from the solid waste stream which are harmful to the environment, and which cannot be recycled, so that they are disposed in an authorized manner.

In carrying out its broad statewide responsibilities to comprehensively manage solid waste, DSWA has undertaken the following activities:

1.) The design, construction and operation of a modern landfill at Cherry Island to serve the needs of New Castle County. The landfill includes environmental protective measures such as a leachate collection system and a landfill gas recovery system. The expansion of the landfill is newly completed and has been financed through multiple bond issuances. With the waste diversion measures currently in place the capacity of the landfill is not expected to be reached until 2046.

2. The acquisition, retrofitting and operation of a landfill gas processing plant at Cherry Island. The processing plant produces commercial quality methane gas which is transported by pipeline to power various green energy projects in New Castle County.

3. The design, construction and operation of a solid waste transfer station at Pine Tree Corners in New Castle County. The transfer station serves the Middletown – Odessa – Townsend area and the solid waste delivered to this facility is transferred to the DSWA landfill at Sandtown in order to preserve landfill space at Cherry Island.

4. The design, construction and operation of a modern landfill at Sandtown to serve the needs of Kent County. The landfill includes environmental protective measures such as a leachate collection system and a landfill gas recovery system. The landfill gas is sold to a private company which uses the gas as fuel to operate an electric generating facility. An expansion of the landfill is newly completed and has been financed through multiple bond issuances. The capacity of the landfill with expansions is not expected to be reached until 2059.

5. The design, construction and operation of a solid waste transfer station at Milford. The solid waste delivered to this facility is transferred to the DSWA landfill at Sandtown.

6. The design, construction and operation of a modern landfill at Jones Crossroads to serve the needs of Sussex County. The landfill includes environmental protective measures such as a leachate collection system and a landfill gas recovery system. The landfill gas is sold to a private company which uses the gas as a fuel to operate an electric generating facility. An expansion of the landfill is newly completed and has been financed through multiple bond issuances. The capacity of the landfill with expansions is not expected to be reached until 2032.

7. The design, construction and operation of a solid waste transfer station at Route 5. The transfer station serves the Lewes – Rehoboth – Georgetown area and the solid waste delivered to the facility is transferred to the DSWA landfill at Jones Crossroads.

8. The operation of a drop-off recycling program with 60 drop-off centers statewide. The recyclables collected are deposited in a single stream with the exception of cardboard, household batteries, motor oil, oil filters and textiles which are separated.

9. Contracting for the design and operation of material recovery facilities at the former landfill at Pigeon Point, New Castle County, Delaware. One of these facilities is designed to process, in a single stream, household and commercial recyclables and to produce from this single stream various marketable commodities such as fiber, plastics and metals. The other facility is designed to process construction and demolition waste and convert this waste into saleable commodities or, instead, alternative daily cover for sanitary landfills.

10. The design, construction and operation of yard waste composting systems at the Cherry Island and Jones Crossroads landfills, and the operation of yard waste mulching systems at all DSWA landfills.

11. Issuing and servicing approximately \$130 million in bonds issued between 2006 and 2010.

By establishing and maintaining multiple facilities throughout Delaware, DSWA provides an indispensable convenience to the public and, in so doing, prevents the air pollution, noise pollution and road congestion that would otherwise result if haulers and the public were forced to travel long distances to deposit waste. Additionally, many of the DSWA's activities are essential waste disposal functions that do not result in revenue generation and are not typically performed by private entities in the waste disposal business. These activities include:

1. The establishment and operation of a public education and public outreach program which includes school and community presentations, distribution of books and educational materials, participation in public events, use of slogans and themes, use of a mascot, and public advertising.

2. Coordination and participation in solid waste and recycling activities with State, county, municipal, local and civic organizations throughout the State.

3. The collection and proper disposal of household hazardous wastes (HHW), electronic goods (EGR), and document shredding at eighteen scheduled Saturday events conducted throughout the State as well 52 HHW and EGR events held once a week in each county.

4. The operation of a recycling program at DSWA transfer stations and landfills which involves the separation and recycling of tires, drywall, textiles, used oil, oil filters, and white goods including refrigerators that must be drained of chlorofluorocarbons.

The proposed amendments to the Regulations, and the contemporaneous proposed amendments to the Statewide Solid Waste Management Plan, will allow DSWA to better control and manage the collection of solid waste in Delaware, assure the usage of the facilities provided by DSWA, and provide the means of financially supporting the referenced activities conducted under the authority and dictates of DSWA's enabling legislation. The proposed amendments will enhance DSWA's ability to monitor, evaluate and police the system of solid waste management in Delaware, including such issues as proper waste disposal, waste volume reduction, use of recycling programs and the full capture of those recyclables in the future.

The proposed amendments also restore a restriction regarding the types of vehicles that newly licensed haulers will be permitted to use, in order to address concerns over roadside litter and leakage from vehicles and containers not designed to store and transport municipal solid waste. This restriction will be applicable only to new licensees and will not apply to haulers already licensed at the time of the effective date of these regulations.

501 Regulations of the Delaware Solid Waste Authority (Break in Continuity of Sections)

3.0 Collection and Licensing

(Break in Continuity Within Section)

3.8 Each Licensee shall comply with the following requirements while collecting, transporting and/or delivering solid waste or dry waste.

(Break in Continuity Within Section)

3.8.6 For Licensees newly licensed on and after January 10, 2016, such Licensees shall only utilize enclosed compactor type vehicles or "roll-offs" with a cover sufficient to prevent any spillage of, loss of, or littering for the collection, transportation, or delivery of solid waste, except for vehicles utilized only to collect, transport, or deliver solid wastes referenced in Section 4.2 and Section 4.3, Infra., or oversized bulky waste, such as couches and large household appliances (i.e., "white goods").

(Break in Continuity Within Section)

4.0 Use of DSWA Facilities by Municipalities and Their Contractors

- 4.1 Any solid waste, including but not limited to dry waste, that is generated in the State of Delaware, and collected, or transported by a Licensee or by any person on behalf of a Licensee, or any municipality, or by a person pursuant to an agreement with any municipality, shall be disposed of at a DSWA facility, unless it is a solid waste listed in Section 4.2 or Section 4.3. Any Licensee, municipality, or other person that enters into an agreement for the collection or transportation of such solid waste that is required to be delivered to a DSWA facility pursuant to this section shall include in such agreement a requirement that the solid waste shall be disposed at a DSWA facility. Every person required by contract to deliver solid waste or Recyclable Materials to a DSWA facility shall comply with such requirement.

(Break in Continuity Within Section)

- 4.3 The following solid waste may but is not required to be delivered to a DSWA facility for disposal or recycling, upon payment of the subject to any limitations imposed by statute, regulation or permit conditions; or otherwise appropriate fee or user charge, provided that delivery of such solid waste is not otherwise proscribed by §4.2:

(Break in Continuity Within Section)

- 4.3.3 Any special solid waste allowed at a DSWA facility pursuant to ~~Article VI~~ Section 6.0 of these regulations.
- 4.3.4 Asbestos.
- 4.3.5 Source separated Recyclable materials
- 4.3.6 Industrial solid waste
- 4.3.7 Agricultural waste generated on a farm
- 4.3.8 Tires
- 4.3.9 Construction and demolition waste generated and collected in New Castle County.
- 4.3.10 Waste materials collected from industrial facilities which have adopted and implemented a companywide policy requiring all waste materials generated at its industrial facilities to be disposed at waste to energy plants. In order for waste to qualify under this subsection 4.3.10, the Licensee transporting such waste must provide a written notification from the industrial facility to the DSWA stating: (i) the name and location of the industrial facility in Delaware; (ii) the industrial facility's companywide policy; (iii) the date and manner by which such companywide policy was adopted; and (iv) the name and location of the waste to energy plant to which the waste materials are being transported. The Licensee seeking to take advantage of this Subsection 4.3.10 must deliver the notice to the DSWA before transporting waste materials to a waste to energy plant.

(Break in Continuity of Sections)

8.0 Recycling

(Break in Continuity Within Section)

- 8.3 The collection and transportation of recyclable materials shall be subject to the requirements of subsections 8.3.1 through 8.3.3 below:
- 8.3.1 Recyclable materials shall be source separated, segregated and stored apart from solid waste at the place of generation, including any materials to be collected under curbside recycling programs;
- 8.3.2 Any Recyclable ~~m~~Materials that are not delivered to a DSWA facility and that are in the possession of a Municipality (or any person under contract with such Municipality) or that are in the possession of a person required by contract with the DSWA to deliver solid waste to DSWA facilities, shall be delivered for processing only to a recycling facility that certifies as to its operations that: (i) the rate of recovery from recyclable materials is at least eighty percent (80%) by weight unless the waste is construction and demolition waste, in which case the rate of recovery is at least ~~sixty~~ fifty percent (~~65~~50%) by weight; and (ii) materials recovered (*i.e.*, not residue) must be recovered for reuse and not for disposal as solid waste. The foregoing certification shall be provided in the form attached hereto as Attachment D; ~~and~~

PROPOSED REGULATIONS

- 8.3.3 The facility at which such recyclable materials are being handled or processed shall operate in full compliance with applicable federal, state and local laws, regulations, ordinances, permits, conditions or other requirements; and
- 8.3.4 All Licensees that have transported Recyclable Materials during the course of any calendar year shall report on a form substantially similar to Attachment F, no later than March 1 of the following year, the tonnage of recyclables delivered to each non-DSWA facility during such year and the average rate of recovery from Recyclables at each such facility for such year, certified by an authorized person on behalf of such facility. The annual report shall contain a certification from the Licensee that to the best of the Licensee's knowledge, the materials recovered from Recyclables delivered to such facility were sold or delivered into the market for recovered materials and were not landfilled.

(Break in Continuity of Sections)

ATTACHMENT D MATERIALS RECOVERY FACILITY ANNUAL CERTIFICATION

I, [name], [title] of [name of MRF] (the "Facility") do hereby certify that I am a representative of the Facility authorized to provide the certifications provided herein; and I further certify as follows with respect to the operations of the Facility during the preceding 12 month period:

- 1. Did the Facility process recyclable materials other than construction and demolition waste?
YES___ NO___
- 2. Did the Facility achieve an average recovery rate of at least 80% by weight for such recyclable materials in each month during the period certified? YES___ NO___
- 3. Did the Facility process construction and demolition waste?
YES___ NO___
- 4. Did the Facility achieve an average recovery rate of at least 650% by weight for such construction and demolition waste in each month during the period certified?
YES___ NO___
- 5. Was the Facility in substantial and material compliance with all applicable federal, state and local laws?
YES___ NO___
- 6. The foregoing responses are true and correct to the best of my knowledge this _____ day of _____, 20 .

Name
Title

Notary Public: _____
My Commission Expires: _____

(Break in Continuity of Sections)

ATTACHMENT F

ANNUAL SOLID WASTE HAULER REPORT FOR RECYCLABLES COLLECTED IN DELAWARE AND DELIVERED AND/OR DISPOSED AT OTHER THAN DSWA FACILITY

Reporting Year: 20_____ Date: _____

Facility Identification Type (C&D or All Other) Tons Delivered Average Recovery Rate

Facility Identification	Type (C&D or All Other)	Tons Delivered	Average Recovery Rate

I hereby certify that all material recovered from Recyclables delivered to non-DSWA facilities during the course of the year that is the subject of this report and that is reported in the "Tons Recovered" column above was, to the best of my knowledge and after reasonable inquiry, sold or otherwise delivered into the market for commodities recovered from recyclable materials and was not landfilled or otherwise disposed of as solid waste.

I hereby represent that I am authorized to file this statement on behalf of the Licensee, and certify that the above information is true and correct to the best of my knowledge, this _____ day of _____, 20_____.

Notary Public_____
Signature

Printed Name and Title: _____

***Please Note: As the rest of the sections were not amended they are not being published. A copy of the regulation is available at:**

501 Regulations of the Delaware Solid Waste Authority

DELAWARE SOLID WASTE AUTHORITY

Statutory Authority: 7 Delaware Code, Section 6403 (7 Del.C. §6403)
1 DE Admin. Code 502

PUBLIC NOTICE

502 Statewide Solid Waste Management Plan

Pursuant to 7 Delaware Code, Sections 6403, 6404, 6406 and other pertinent provisions of 7 Delaware Code, Chapter 64; the Delaware Solid Waste Authority ("DSWA") is proposing amendments to the Statewide Solid Waste Management Plan (the "Plan") to modify the Plan adopted effective May 10, 2010 and amended effective on May 10, 2013.

Notice of Hearing: A public hearing will be held on November 2, 2015 at 3:00 p.m. in the Corporate Training Center, Room 400A, Delaware Technical and Community College Terry Campus, 100 Campus Drive, Dover, DE 19904. The hearing is to provide an opportunity for public comment on the proposed amendments.

Written Comments: The DSWA will receive written comments, suggestions briefs or other written material until the close of business, November 17, 2015. Written comments, suggestions, compilations of data or other written material shall be submitted to Michael D. Parkowski, Chief of Business Services and Government Relations, Delaware Solid Waste Authority, 1128 South Bradford Street, Dover, Delaware 19904. Anyone wishing to obtain a copy of the proposed amendments may obtain a copy from the Delaware Solid Waste Authority, 1128

South Bradford Street, Dover, Delaware 19904, (302) 739-5361.

Summary of Proposed Changes: Pursuant to 7 **Delaware Code**, Chapter 64, the DSWA is charged with developing the Plan and amending the Plan as necessary. The proposed amendments will address the purposes and impact of changes to DSWA regulations, proposed contemporaneously herewith, that will have the effect of requiring most solid waste generated in the State of Delaware to be delivered to a DSWA facility. The proposed amendments will also briefly update certain matters addressed in the Plan.

Background and Purpose: The Delaware Solid Waste Authority (“DSWA”) was established by the Delaware General Assembly in 1975 as a statewide solid waste authority, a body politic and corporate constituting a public instrumentality of the State created to perform essential public and governmental functions. The findings, policies and purposes of the enabling legislation recognized among other things the need for the people of the state to have a clean and wholesome environment through the statewide management of solid waste generated in Delaware. Such statewide management includes the establishment of programs for collection and disposal of solid waste and the recovery of and reuse of discarded materials through recycling and beneficial use.

In discharging its responsibility, DSWA undertakes planning, research and development functions utilizing professional technical and management employees, and a support staff. The activities of DSWA are subject to the oversight and control of a seven (7) person Board of Directors, each Director being appointed by the Governor and confirmed by the Senate.

DSWA has been granted the authority to adopt regulations and establish a licensing program for collectors of solid waste. Enforcement powers granted to DSWA include the assessment of civil penalties, license suspension or revocation, and injunctive relief.

In order to fund the comprehensive activities authorized by the General Assembly, DSWA has been empowered to establish user fees for the services it provides and to borrow money through bond financing and otherwise. DSWA receives no State or federal funding, and the full faith and credit of the State is not pledged for any of DSWA’s debt. To assure the proper management of solid waste and provide sufficient financial support for its programs, DSWA is authorized to control the collection, transportation, storage and disposal of solid waste throughout the State.

DSWA has been provided extensive authority to utilize services provided by the private sector and to engage in cooperative arrangements with other State entities, counties and municipalities. DSWA has also been charged with establishing an extensive recycling program and a public education program. Included in the recycling initiative is the removal of materials from the solid waste stream which are harmful to the environment, and which cannot be recycled, so that they are disposed in an authorized manner.

In carrying out its broad statewide responsibilities to comprehensively manage solid waste, DSWA has undertaken the following activities:

1. The design, construction and operation of a modern landfill at Cherry Island to serve the needs of New Castle County. The landfill includes environmental protective measures such as a leachate collection system and a landfill gas recovery system. The expansion of the landfill is newly completed and has been financed through multiple bond issuances. With the waste diversion measures currently in place the capacity of the landfill is not expected to be reached until 2046.

2. The acquisition, retrofitting and operation of a landfill gas processing plant at Cherry Island. The processing plant produces commercial quality methane gas which is transported by pipeline to power various green energy projects in New Castle County.

3. The design, construction and operation of a solid waste transfer station at Pine Tree Corners in New Castle County. The transfer station serves the Middletown – Odessa – Townsend area and the solid waste delivered to this facility is transferred to the DSWA landfill at Sandtown in order to preserve landfill space at Cherry Island.

4. The design, construction and operation of a modern landfill at Sandtown to serve the needs of Kent County. The landfill includes environmental protective measures such as a leachate collection system and a landfill gas recovery system. The landfill gas is sold to a private company which uses the gas as fuel to operate an electric generating facility. An expansion of the landfill is newly completed and has been financed through multiple bond issuances. The capacity of the landfill with expansions is not expected to be reached until 2059.

5. The design, construction and operation of a solid waste transfer station at Milford. The solid waste delivered to this facility is transferred to the DSWA landfill at Sandtown.

6. The design, construction and operation of a modern landfill at Jones Crossroads to serve the needs of Sussex County. The landfill includes environmental protective measures such as a leachate collection system and

a landfill gas recovery system. The landfill gas is sold to a private company which uses the gas as a fuel to operate an electric generating facility. An expansion of the landfill is newly completed and has been financed through multiple bond issuances. The capacity of the landfill with expansions is not expected to be reached until 2032.

7. The design, construction and operation of a solid waste transfer station at Route 5. The transfer station serves the Lewes – Rehoboth – Georgetown area and the solid waste delivered to the facility is transferred to the DSWA landfill at Jones Crossroads.

8. The operation of a drop-off recycling program with 60 drop-off centers statewide. The recyclables collected are deposited in a single stream with the exception of cardboard, household batteries, motor oil, oil filters and textiles which are separated.

9. Contracting for the design and operation of material recovery facilities at the former landfill at Pigeon Point, New Castle County, Delaware. One of these facilities is designed to process, in a single stream, household and commercial recyclables and to produce from this single stream various marketable commodities such as fiber, plastics and metal. The other facility is designed to process construction and demolition waste and convert this waste into saleable commodities or, instead, alternative daily cover for sanitary landfills.

10. The design, construction and operation of yard waste composting systems at the Cherry Island and Jones Crossroads landfills, and the operation of yard waste mulching systems at all DSWA landfills.

11. Issuing and servicing approximately \$130 million in bonds issued between 2006 and 2010.

By establishing and maintaining multiple facilities throughout Delaware, DSWA provides an indispensable convenience to the public and, in so doing, prevents the air pollution, noise pollution and road congestion that would otherwise result if haulers and the public were forced to travel long distances to deposit waste. Additionally, many of the DSWA's activities are essential waste disposal functions that do not result in revenue generation and are not typically performed by private entities in the waste disposal business. These activities include:

1. The establishment and operation of a public education and public outreach program which includes school and community presentations, distribution of books and educational materials, participation in public events, use of slogans and themes, use of a mascot, and public advertising.

2. Coordination and participation in solid waste and recycling activities with State, county, municipal, local and civic organizations throughout the State.

3. The collection and proper disposal of household hazardous wastes ("HHW"), electronic goods ("EGR"), and document shredding at eighteen scheduled Saturday events conducted throughout the State as well as 52 HHW and EGR events held once a week in each county.

4. The operation of a recycling program at DSWA transfer stations and landfills which involves the separation and recycling of tires, drywall, textiles, used oil, oil filters, and white goods including refrigerators that must be drained of chlorofluorocarbons.

The proposed amendments to the SSWMP, and the contemporaneous proposed amendments to the Regulations of the DSWA, will allow DSWA to better control and manage the collection of solid waste in Delaware, assure the usage of the facilities provided by DSWA, and provide the means of financially supporting the referenced activities conducted under the authority and dictates of DSWA's enabling legislation. The proposed amendments will enhance DSWA's ability to monitor, evaluate and police the system of solid waste management in Delaware, including such issues as proper waste disposal, waste volume reduction, use of recycling programs and the full capture of those recyclables in the future.

***Please Note: Due to the size of the proposed regulation, it is not being published here. A copy of the regulation is available at:**

502 Statewide Solid Waste Management Plan

PROPOSED REGULATIONS

DEPARTMENT OF EDUCATION OFFICE OF THE SECRETARY

Statutory Authority: 14 Delaware Code, Section 122(b) (14 Del.C. §122(b))
14 DE Admin. Code 103

PUBLIC NOTICE

103 Accountability for Schools, Districts and the State

The Delaware Department of Education, pursuant to 14 Del. C. §122 and subchapter VII of Chapter 12 of Title 14 of the **Delaware Code**, proposes, with the consent of the State Board of Education, to amend 14 DE Admin. Code 103 Accountability for Schools, Districts and the State. This regulation is being amended to reflect changes to the Department of Education's accountability system for schools, districts and the State, including changes as approved by the Elementary and Secondary School Elementary Education Act Flexibility application. The timing for the updates to this regulation is consistent with the FY16 Appropriations Act epilogue language.

The proposed regulation was published in the September 2015 issue of the Delaware *Register of Regulations*. The comment period on the proposed regulation changes, which originally ended by the close of business on or before October 1, 2015, is being extended to close of business on or before October 8, 2015. Persons wishing to present their views regarding this matter may do so in writing by 4:30 P.M. on or before October 8, 2015 to Tina Shockley, Education Associate, Department of Education, Regulatory Review, at 401 Federal Street, Suite 2, Dover, Delaware 19901. A copy of this regulation may be viewed or obtained at the Department of Education, Finance Office located at the address listed above.

***Please Note: Due to the size of the proposed regulation, it is not being published here. A copy of the regulation is available at:**

103 Accountability for Schools, Districts and the State

OFFICE OF THE SECRETARY

Statutory Authority: 14 Delaware Code, Section 122(b) (14 Del.C. §122(b))
14 DE Admin. Code 811

Education Impact Analysis Pursuant To 14 Del.C. Section 122(d)

811 School Health Record Keeping Requirements

A. Type of Regulatory Action Required

Amendment to Existing Regulation

B. Synopsis of Subject Matter of the Regulation

The Secretary of Education intends to amend 14 DE Admin. Code 811 School Health Record Keeping Requirements. This regulation is being amended to clarify procedures and purpose of school health record keeping documents.

Persons wishing to present their views regarding this matter may do so in writing by the close of business on or before November 5, 2015 to Tina Shockley, Education Associate, Department of Education, Regulatory Review, at 401 Federal Street, Suite 2, Dover, Delaware 19901. A copy of this regulation may be viewed or obtained at the Department of Education, Finance Office located at the address listed above.

C. Impact Criteria

1. Will the amended regulation help improve student achievement as measured against state achievement standards? The amended regulation is intended to assist student achievement by supporting their health so that they can be in school and fully participate. It is not measured against state achievement standards.

2. Will the amended regulation help ensure that all students receive an equitable education? The amended regulation is intended to continue to help ensure all students receive an equitable education.
3. Will the amended regulation help to ensure that all students' health and safety are adequately protected? The amendments address students' health and safety.
4. Will the amended regulation help to ensure that all students' legal rights are respected? The amended regulation continues to help ensure that all students' legal rights are respected.
5. Will the amended regulation preserve the necessary authority and flexibility of decision making at the local board and school level? The amended regulation does not change the decision making at the local board and school level.
6. Will the amended regulation place unnecessary reporting or administrative requirements or mandates upon decision makers at the local board and school levels? The amended regulation does not place any unnecessary reporting or administrative requirements on decision makers.
7. Will the decision making authority and accountability for addressing the subject to be regulated be placed in the same entity? The decision making authority and accountability for addressing the subject to be regulated does not change because of the amendment.
8. Will the amended regulation be consistent with and not an impediment to the implementation of other state educational policies, in particular to state educational policies addressing achievement in the core academic subjects of mathematics, science, language arts and social studies? The amendment is consistent with and not an impediment to the implementation of other state educational policies.
9. Is there a less burdensome method for addressing the purpose of the regulation? There is not a less burdensome method for addressing the purpose of the regulation.
10. What is the cost to the State and to the local school boards of compliance with the regulation? There is no expected additional cost to implementing this amended regulation.

811 School Health Record Keeping Requirements

1.0 Definitions

"Delaware School Health Record Form" means an ~~form~~ electronic document containing ~~documentation of an~~ information about a student's health information, which includes but is not limited to ~~identifying information, health history, the student's name, gender, birthdate,~~ immunizations, results of mandated testing and screenings, medical diagnoses, long-term issued medications and treatments, and referrals.

"Department" means the Delaware Department of Education.

"Emergency/Nursing Treatment Card" means a ~~card~~ form containing contact information and general school emergency procedures for the care of a student who becomes sick or injured at school. The card contains the following information: the student's name, birth date, school district, school, grade, ~~home room or teacher or class assignment,~~ home address, home and telephone number; the name, place of employment and work telephone number of the parent, guardian or Relative Caregiver; two other names, addresses, and telephone numbers of individuals who can be contacted at times when the parent, guardian or Relative Caregiver ~~can not~~ cannot be reached; the name and telephone number of the ~~family physician~~ primary health care provider and family dentist; any medical conditions or allergies the student has; and the student's medical insurance.

"Student Accident Report Form" means a form developed by the Department that is used by the district or charter to review school accidents resulting in medical evaluation or referral.

"Student Health History Update" means a form developed by the Department that is used to obtain current student health information from the parent, guardian, or Relative Caregiver or the student if 18 years or older or an unaccompanied homeless youth.

"Summary of School Health Services" means an annual report created by the Department on school health services that have been provided and electronically documented by school nurses.

2.0 Emergency/Nursing Treatment Card

- 2.1 An Emergency/Nursing Treatment Card for each public school student shall be on file in the office of the school nurse.
 - 2.1.1 The information on the Emergency/Nursing Treatment Card shall be shared only on a need to know basis as related to the education and health needs of the student and consistent with state and federal laws.
 - 2.1.2 The parent, guardian or Relative Caregiver or the student if 18 years or older, or an unaccompanied homeless youth (as defined by 42 U.S.C. 11434(a)) shall sign the Emergency/Nursing Treatment Card to assure they understand the purpose of the form and acknowledge the accuracy of the information.
 - 2.1.3 The Emergency/Nursing Treatment Card is used to update the student's medical information on the Delaware School Health Record and student's contact information in the district or charter electronic pupil accountability system.
 - 2.1.4 The contact information on the Emergency/Nursing Treatment Card shall be used by the school nurse to contact the parent regarding any health-related matter and to identify a person to pick up or provide consultation regarding the student's acute illness or injury.

3.0 Delaware School Health Record ~~Form~~

- 3.1 The Delaware School Health Record ~~Form~~ shall be current and shall be part of the student's health record within the Cumulative Record File (14 **DE Admin. Code** 252) which accompanies the student when he or she moves to another school.
- 3.2 The Delaware School Health Record ~~Form~~ shall be maintained for the duration of the student's schooling and the school nurse shall use the Student Health History Update ~~Form~~ to keep health records current. ~~The Delaware School Health Record Form shall remain in the nurse's file during the student's attendance in school.~~
 - 3.2.1 ~~The Delaware School Health Record Form may shall be maintained in hard copy or within an electronic documentation program and transferred electronically with the student. If the Delaware School Health Record cannot be transferred electronically, a hard copy shall be created and transferred to the receiving school. Beginning with the 2008-2009 school year, all Delaware School Health Records Forms shall be in an electronic format.~~
- 3.3 Documentation received on the student's health, including parent medication permission slips and immunization records, shall be recorded in his or her electronic Delaware School Health Record. Hard copies of the documents shall be maintained in an individual school health folder.

NON REGULATORY NOTE: also see 14 **DE Admin. Code** 251 and 252 and the Delaware Public Archives Document Delaware School Districts General Records Retention Schedule.

4.0 Other Required Documentation

- 4.1 The school nurse shall document in the state, district, or charter electronic health record system for individual student health data any nursing care provided including the school name, a three point date, the person's (student, staff or visitor) first and last name, the time of arrival and departure, the presenting complaint, the nurse's assessment intervention and the outcome, including the disposition of the situation, the parent or other contact, if appropriate, and the nurse's complete signature or initials.
 - 4.1.1 The school nurse shall document the care given at the time of a school based accident by completing the Student Accident Report Form if the student missed more than one half day because of the accident or if the school nurse has referred the student for a medical evaluation regardless of whether the parent, guardian or Relative Caregiver or student if 18 years or older, or an unaccompanied homeless youth (as defined by 42 U.S.C. 11434(a)) followed through on that request.

5.0 Submission of Records

- 5.1 ~~All local school districts and charter schools shall submit the Summary of School Health Services Form, to the Delaware Department of Education by August 31st of each year. The form shall include all of the school health services provided in all schools during the fiscal year including summer programs. The Department will annually create the Summary of School Health Services provided by districts and charters. Data from the previous school year shall be collected from the state's pupil accountability system after August 15th. Any district or charter using an alternative electronic health record shall submit an electronic version of the Summary of School Health Services report to the Department by August 31st of each year.~~
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PROFESSIONAL STANDARDS BOARD

Statutory Authority: 14 Delaware Code, Section 1205(b) (14 Del.C. §1205(b))
14 DE Admin. Code 1559

Education Impact Analysis Pursuant to 14 Del.C. Section 122(d)

1559 Skilled and Technical Sciences Teacher

A. TYPE OF REGULATORY ACTION REQUESTED

Amendment to Existing Regulation

B. SYNOPSIS OF SUBJECT MATTER OF REGULATION

The Professional Standards Board, acting in cooperation and collaboration with the Department of Education, seeks the consent of the State Board of Education to amend regulation 14 DE Admin. Code 1559 Skilled and Technical Sciences Teacher. The regulation concerns the requirements for certification of educational personnel, pursuant to 14 Del.C. §1220(a). This Skilled and Technical Sciences Teacher regulation is being amended to expand the definition of Career and Technical Education programs and to help create opportunities for all students to pursue a career and college readiness instructional program. This regulation sets forth the requirements for a Skilled and Technical Sciences Teacher.

Persons wishing to present their views regarding this matter may do so in writing by the close of business on Friday, October 30, 2015 to Mr. Chris Kenton, Executive Director, Delaware Professional Standards Board, The Townsend Building, 401 Federal Street, Dover, Delaware 19901. Copies of this regulation are available from the above address or may be viewed at the Professional Standards Board Business Office.

C. IMPACT CRITERIA

1. Will the amended regulation help improve student achievement as measured against state achievement standards? The amended regulation addresses student achievement by establishing standards for the issuance of a standard certificate to educators who have acquired the prescribed knowledge, skill and/or education to practice in a particular area, to teach a particular subject or to instruct a particular category of students to help ensure that students are instructed by educators who are highly qualified.

2. Will the amended regulation help ensure that all students receive an equitable education? The amended regulation helps to ensure that all teachers employed to teach students meet high standards and have acquired the prescribed knowledge, skill and/or education to practice in a particular area, to teach a particular subject or to instruct a particular category of students.

3. Will the amended regulation help to ensure that all students' health and safety are adequately protected? The amended regulation addresses educator certification, not students' health and safety.

4. Will the amended regulation help to ensure that all students' legal rights are respected? The amended regulation addresses educator certification, not students' legal rights.

5. Will the amended regulation preserve the necessary authority and flexibility of decision-makers at the local board and school level? The amended regulation will preserve the necessary authority and flexibility of decision makers at the local board and school level.

6. Will the amended regulation place unnecessary reporting or administrative requirements or mandates upon decision makers at the local board and school levels? The amended regulation will not place unnecessary reporting or administrative requirements or mandates upon decision makers at the local board and school levels.

7. Will decision making authority and accountability for addressing the subject to be regulated be placed in the same entity? The decision-making authority and accountability for addressing the subject to be regulated rests with the Professional Standards Board, in collaboration with the Department of Education, and with the consent of the State Board of Education.

8. Will the amended regulation be consistent with and not an impediment to the implementation of other state educational policies, in particular to state educational policies addressing achievement in the core academic subjects of mathematics, science, language arts and social studies? The amended regulation will be consistent with, and not an impediment to, the implementation of other state educational policies, in particular to state educational policies addressing achievement in the core academic subjects of mathematics, science, language arts and social studies.

9. Is there a less burdensome method for addressing the purpose of the amended regulation? 14 **Del.C.** requires that we promulgate this regulation.

10. What is the cost to the state and to the local school boards of compliance with the adopted regulation? There is no additional cost to local school boards for compliance with the regulation.

1559 Skilled and Technical Sciences Teacher

1.0 Content

- 1.1 This regulation shall apply to the issuance of a Standard Certificate, pursuant to 14 **Del.C.** §1220(a) for Skilled and Technical Sciences Teacher in a ~~Specific Career Area~~. This certification is required for grades 9 to 12, and for grades 6 to 8 in a Middle Level school. Certificates issued are in the specific career area. A general Skilled and Technical Sciences certification does not exist, and qualified Educators may become certified for more than one specific career area by meeting the qualifications for each area, however no general Skilled and Technical Sciences certification exists.
- 1.2 Except as otherwise provided, the requirements set forth in 14 **DE Admin. Code** 1505 Standard Certificate, including any subsequent amendment or revision thereto, are incorporated herein by reference.

2.0 Definitions

- 2.1 The definitions set forth in 14 **DE Admin. Code** 1505 Standard Certificate, including any subsequent amendment or revision thereto, are incorporated herein by reference.
- 2.2 The following words and terms, when used in this regulation, shall have the following meaning unless the context clearly indicates otherwise:
- “**Career and Technical Education**” is also known as Vocational Education, Vocational Technical Education or Career Technical Education.
- “**HVAC**” means ~~Heating, Ventilation, and Air-Conditioning.~~
- “**Nine (9) Career-Related Credits**” means nine (9) college credits or an equivalent number of hours in professional development, technical training or certification, with one (1) credit equating to fifteen (15) hours taken either as part of a degree program or in addition to it, from a regionally accredited college or university, or a professional development provider approved by the employing school district or charter school. These credits may also be earned through a certified or licensed technical training provider or through specified technical training or verification of the equivalent knowledge and training by technical certification as specified in the Department’s ~~current Skilled and Technical Sciences Standards in the Specific Career Area Program Certification Requirements~~ (See 14 **DE. Admin Code** 525 Requirements for Career and Technical Education Programs).

“Six (6) Career and Technical Education Pedagogy Credits” means six (6) college credits taken either as part of a degree program or in addition to it, from a regionally accredited college or university, from the following content areas:

- ~~Methods of Teaching Career and Technical Education I, or Career and Technical Education Materials and Approaches I; and~~
- ~~Career and Technical Student Organizations, or Career and Technical Education Materials and Approaches II.~~

“Skilled and Technical Sciences (STS)” is also known as Trade and Industrial Education, Career and Technical Education, Career Technical Education or Career-Technical Education.

“Specific Career Area” means a specific career area approved by the Department as a Career Technical Education Program ~~and as defined in the Skilled and Technical Sciences Certification Inventory or included in the Department’s Skilled and Technical Sciences Standards. Examples include but are not limited to the following: Automotive/Automotive Mechanical Technology/Technician; Autobody/Collision and Repair Technology/Technician; Carpentry/Carpenter; Child Care Provider/Assistant; Cosmetology/Cosmetologist, General; Dental Laboratory Technology/Technician; Electrician; HVAC-R Maintenance Technology; Licensed Practical/Vocational Nurse Training; Mason/Masonry; Medical/Clinical Assistant; Nurse/Nursing Assistant and Patient Care Assistant; Plumbing Technology/Plumber; Sheet Metal Technology/Sheetworking; and Welding Technology/Welder.~~

“Specific Career Area Program Certification Requirements” means educator requirements necessary to achieve Department approval of the Career Technical Education program. (See 14 DE Admin. Code 525 Requirements for Career and Technical Education Programs).

“Teacher of Trade and Industries” means a Skilled and Technical Sciences Teacher.

“Two Years of College or Technical Training” means a minimum of a high school diploma or its recognized equivalent and the satisfactory completion of any one of the following options in the specific career area of certification (1) an Associate’s degree with a major in the specific career area; (2) two years of college majoring in the specific career area with at least 50% of the major courses required for a Bachelor’s degree satisfactorily completed; (3) a state issued certificate indicating completion of apprenticeship hours and apprentice related training (e.g. journey papers) in the specific career area; (4) completion of four years of sequential Delaware Trade Extension courses in the specific career area; (5) completion of four years of National Center for Construction Education and Research’s *Contren* documented training in the specific career area; (6) a 70% or above score on both the written and performance elements of a Delaware Apprentice-related Education Provider’s National Center for Construction Education and Research’s *Contren*-derived full Apprentice Equivalency test-out covering all Apprentice-related Education years in the specific career area; (7) passage of a State of Delaware Licensing Test in the specific career area, offered through the Division of Professional Regulation; (8) 576 hours of military training in the specific career area; (9) 576 hours post-secondary trade school training in the specific career area; ~~(10) a 70% or above score on both the written and performance teacher tests for the National Occupational Competency Testing Institute in the specific career area; (11) an industry recognized certification of technical competence or journey person status in the specific career area, or (12) DOE approved equivalents of any one of the above including but not limited to equivalents from any combination of the above options.~~

“Vocational Trade and Industry Area” means Skilled and Technical Sciences Area.

“Work Experience” means full time employment or work training experience in the specific Skilled and Technical Sciences career area of certification. An educator may substitute an Associate’s degree in the specific Skilled and Technical Sciences career area of certification for a maximum of one (1) year of work experience or a Bachelor’s degree in the specific Skilled and Technical Sciences career area of certification for a maximum of two (2) years of work experience. ~~The educator may only substitute one degree for a maximum of two years work experience credit and may not use two Associates degrees to equal two years of work experience.~~

3.0 Standard Certificate

- 3.1 In accordance with 14 **Del.C.** §1220(a) the Department shall issue a Standard Certificate as a Skilled and Technical Sciences Teacher of a specific career area to an educator who has met the following:
- 3.1.1 Holds a valid Delaware Initial, Continuing, or Advanced License; or a Limited Standard or Standard Certificate issued by the Department prior to August 31, 2003; and
 - 3.1.2 Has met the requirements as set forth in 14 **DE Admin. Code** 1505 Standard Certificate, with the exception of the requirement of a Bachelor's degree in 3.1.5, including any subsequent amendment or revision thereto; and
 - 3.1.3 Has satisfied the additional requirements in this regulation including holding a Bachelor's degree or the completion of education and training equivalent to a Bachelor's degree as specified in this regulation.

4.0 Educational Requirements

An educator shall also have met the following:

- 4.1 Satisfactorily completed nine (9) Career-Related Credits related to their area of certification and six (6) Career and Technical Education Pedagogy credits; and
- 4.2 **Bachelor's Degree:**
Holds a Bachelor's degree from a regionally accredited college or university in any content area; or the equivalent of a Bachelor's Degree as specified in subsection 4.3.
- 4.3 **Equivalent of a Bachelor's Degree:**
Acquired the knowledge and training equivalent to a Bachelor's Degree by meeting one of the following:
 - 4.3.1 **Associate's Degree and additional education:**
 ~~Holds an Associate's degree in any content area and has met the following criteria:~~
 - 4.3.1.1 ~~Satisfactorily completed nine (9) college credits in non-duplicated courses taken either as part of a degree program or in addition to it from a regionally accredited college or university in the following content areas:~~ Holds an Associate's degree in any content area and has met the additional education requirements in 4.3.1.2.
 - 4.3.1.1.1 ~~Career and Technical Education Pedagogy (6 credits); and~~
 - 4.3.1.1.2 ~~Special Education (3 credits); and~~
 - 4.3.1.2 Satisfactorily completed ~~twelve (12)~~ twenty-one (21) college credits or their equivalent in professional development or technical training in non-duplicated courses taken either as part of a degree program or in addition to it from a regionally accredited college or university or from a technical training or professional development provider in any combination of the following content areas with at least one (1) course in each of the required content areas:
 - 4.3.1.2.1 Career and Technical Education Pedagogy (required)
 - 4.3.1.2.2 ~~Education Pedagogy~~ Special Education (required)
 - 4.3.1.2.3 Educational Psychology
 - 4.3.1.2.4 ~~Special Education~~ Education Pedagogy
 - 4.3.1.2.5 Science
 - 4.3.1.2.6 Mathematics
 - 4.3.1.2.7 English
 - 4.3.1.2.8 ~~Computer Literacy~~ Social Studies; or
 - 4.3.1.2.9 ~~Social Studies~~; or
 - 4.3.1.2.10 Education in the specific career area of certification ~~including specifications listed in the Department's specific career area program certification requirements;~~ or;
 - 4.3.2 **Two Years of College or Technical Training and additional education:**

~~Satisfactorily completed Two Years of College or Technical Training and has met the following criteria:~~

- 4.3.2.1 Satisfactorily completed Two Years of College or Technical Training and the additional education requirements in ~~4.3.1.1 and 4.3.1.2 and 4.3.2.2; and,~~
- 4.3.2.2 Satisfactorily completed fifteen (15) college credits in non-duplicated courses taken either as part of a degree program or in addition to it from a regionally accredited college or university, with at least one (1) course in each of the following required content areas:
 - 4.3.2.2.1 Science (3 credits)
 - 4.3.2.2.2 Mathematics (3 credits)
 - 4.3.2.2.3 English (3 credits)
 - 4.3.2.2.4 Psychology (3 credits),
 - ~~4.3.2.2.5 Computer Literacy (3 credits).~~

5.0 Experience Requirements

An educator shall also have met the following:

- 5.1 Acquired a minimum of six (6) years of work experience in an area related to the Skilled and Technical Sciences specific career area, two (2) of which must be within the last five (5) years, ~~in the Skilled and Technical Sciences Specific Career Area of Certification; or~~
- 5.2 Acquired a minimum of six (6) years of work experience by teaching in or direct supervision of educators in an area related to the Skilled and Technical Sciences specific career area, of certification within any time period and maintained current experience by full-time teaching in or direct supervision of the specific career area of certification for a minimum, of two (2) years of which must be within the last five (5) years.

6.0 Professional and Occupational License Requirements

An educator shall also have met the following:

- 6.1 In skilled or technical sciences occupations where a state license or registration is required by law, all applicants for Skilled and Technical Sciences certification, ~~with the exception of the areas listed in 6.2;~~ shall present a valid and current Delaware license or registration upon application for a ~~Standard Certificate; and teaching credentials.~~
- 6.2 Applicants for Skilled and Technical Sciences certification in the career areas of Electrician, Plumber or HVAC ~~shall present a valid and current Delaware license as part of completing certification requirements, pursuant to 14 Del.C. §1210(f) Ch. 12; and~~
- 6.32 The state license or registration shall be renewed as required by law.

PROFESSIONAL STANDARDS BOARD

Statutory Authority: 14 Delaware Code, Section 1205(b) (14 Del.C. §1205(b))
14 DE Admin. Code 1583

PUBLIC NOTICE

1583 School Psychologist

A. TYPE OF REGULATORY ACTION REQUESTED

Amendment to Existing Regulation

B. SYNOPSIS OF SUBJECT MATTER OF REGULATION

The Professional Standards Board, acting in cooperation and collaboration with the Department of Education, seeks the consent of the State Board of Education to amend regulation 14 DE Admin. Code 1583 School

Psychologist. Amendments to this regulation were made to clear up some language under additional requirements necessary to become a School Psychologist. This regulation sets forth the requirements for a School Psychologist.

Persons wishing to present their views regarding this matter may do so in writing by the close of business on Friday, October 30, 2015 to Mr. Chris Kenton, Executive Director, Delaware Professional Standards Board, The Townsend Building, 401 Federal Street, Dover, Delaware 19901. Copies of this regulation are available from the above address or may be viewed at the Professional Standards Board Business Office.

C. IMPACT CRITERIA

1. Will the amended regulation help improve student achievement as measured against state achievement standards? The amended regulation addresses student achievement by establishing standards for the issuance of a standard certificate to educators who have acquired the prescribed knowledge, skill and/or education to practice in a particular area, to teach a particular subject or to instruct a particular category of students to help ensure that students are instructed by educators who are highly qualified.

2. Will the amended regulation help ensure that all students receive an equitable education? The amended regulation helps to ensure that all teachers employed to teach students meet high standards and have acquired the prescribed knowledge, skill and/or education to practice in a particular area, to teach a particular subject or to instruct a particular category of students.

3. Will the amended regulation help to ensure that all students' health and safety are adequately protected? The amended regulation addresses educator certification, not students' health and safety.

4. Will the amended regulation help to ensure that all students' legal rights are respected? The amended regulation addresses educator certification, not students' legal rights.

5. Will the amended regulation preserve the necessary authority and flexibility of decision-makers at the local board and school level? The amended regulation will preserve the necessary authority and flexibility of decision makers at the local board and school level.

6. Will the amended regulation place unnecessary reporting or administrative requirements or mandates upon decision makers at the local board and school levels? The amended regulation will not place unnecessary reporting or administrative requirements or mandates upon decision makers at the local board and school levels.

7. Will decision making authority and accountability for addressing the subject to be regulated be placed in the same entity? The decision-making authority and accountability for addressing the subject to be regulated rests with the Professional Standards Board, in collaboration with the Department of Education, and with the consent of the State Board of Education.

8. Will the amended regulation be consistent with and not an impediment to the implementation of other state educational policies, in particular to state educational policies addressing achievement in the core academic subjects of mathematics, science, language arts and social studies? The amended regulation will be consistent with, and not an impediment to, the implementation of other state educational policies, in particular to state educational policies addressing achievement in the core academic subjects of mathematics, science, language arts and social studies.

9. Is there a less burdensome method for addressing the purpose of the amended regulation? 14 **Del.C.** requires that we promulgate this regulation.

10. What is the cost to the state and to the local school boards of compliance with the adopted regulation? There is no additional cost to local school boards for compliance with the regulation.

1583 School Psychologist

(Break in Continuity of Sections)

4.0 Additional Requirements

4.1 An educator shall also have satisfied at least one (1) of the following additional education and internship requirement Options:

4.1.1 NASP or APA School Psychology Degree:

4.1.1.1 Has successfully completed an organized graduate level program of study in "School Psychology" offered by a regionally accredited college or university and approved by the National Association of School Psychologists (NASP) or the American Psychological

Association (APA), culminating in an ~~Masters with an additional~~ Educational Specialist (Ed.S.) degree or its equivalent or a Doctoral degree in School Psychology; and

- 4.1.1.2 Has successfully completed a supervised internship.
- 4.1.2 NCSP Certificate:
 - 4.1.2.1 Holds a valid Nationally Certified School Psychologist (NCSP) Certificate from the National Association of School Psychologists (NASP).
- 4.1.3 License or certificate from other state:
 - 4.1.3.1 Holds a valid and current license or certificate from another state in school psychology.

***Please Note: As the rest of the sections were not amended they are not being published. A copy of the regulation is available at:**

1583 School Psychologist

PROFESSIONAL STANDARDS BOARD

Statutory Authority: 14 Delaware Code, Section 1205(b) (14 **Del.C.** §1205(b))
14 **DE Admin. Code** 1595

Education Impact Analysis Pursuant to 14 Del.C. Section 122(d)

1595 Certification Programs for Leaders in Education

A. TYPE OF REGULATORY ACTION REQUESTED

Amendment to Existing Regulation

B. SYNOPSIS OF SUBJECT MATTER OF REGULATION

The Professional Standards Board, acting in cooperation and collaboration with the Department of Education, seeks the consent of the State Board of Education to amend regulation 14 **DE Admin. Code** 1595 Certification Programs for Leaders in Education. The regulation concerns the requirements for certification of educational personnel, pursuant to 14 **Del.C.** §1220(a). It is necessary to amend this regulation in order to define and set out the parameters for the approval and renewal of additional programs for Delaware leaders in education. This regulation sets forth the requirements for Certification Programs for Leaders in Education.

Persons wishing to present their views regarding this matter may do so in writing by the close of business on Friday, October 30, 2015 to Mr. Chris Kenton, Executive Director, Delaware Professional Standards Board, The Townsend Building, 401 Federal Street, Dover, Delaware 19901. Copies of this regulation are available from the above address or may be viewed at the Professional Standards Board Business Office.

C. IMPACT CRITERIA

1. Will the adopted regulation help improve student achievement as measured against state achievement standards? The adopted regulation addresses student achievement by establishing standards for the issuance of a standard certificate to educators who have acquired the prescribed knowledge, skill and/or education to practice in a particular area, to teach a particular subject or to instruct a particular category of students to help ensure that students are instructed by educators who are highly qualified.

2. Will the adopted regulation help ensure that all students receive an equitable education? The adopted regulation helps to ensure that all teachers employed to teach students meet high standards and have acquired the prescribed knowledge, skill and/or education to practice in a particular area, to teach a particular subject or to instruct a particular category of students.

3. Will the adopted regulation help to ensure that all students' health and safety are adequately protected? The adopted regulation addresses educator certification, not students' health and safety.

4. Will the adopted regulation help to ensure that all students' legal rights are respected? The adopted regulation addresses educator certification, not students' legal rights.

5. Will the adopted regulation preserve the necessary authority and flexibility of decision-makers at the local

board and school level? The adopted regulation will preserve the necessary authority and flexibility of decision makers at the local board and school level.

6. Will the adopted regulation place unnecessary reporting or administrative requirements or mandates upon decision makers at the local board and school levels? The adopted regulation will not place unnecessary reporting or administrative requirements or mandates upon decision makers at the local board and school levels.

7. Will decision making authority and accountability for addressing the subject to be regulated be placed in the same entity? The decision-making authority and accountability for addressing the subject to be regulated rests with the Professional Standards Board, in collaboration with the Department of Education, and with the consent of the State Board of Education.

8. Will the adopted regulation be consistent with and not an impediment to the implementation of other state educational policies, in particular to state educational policies addressing achievement in the core academic subjects of mathematics, science, language arts and social studies? The adopted regulation will be consistent with, and not an impediment to, the implementation of other state educational policies, in particular to state educational policies addressing achievement in the core academic subjects of mathematics, science, language arts and social studies.

9. Is there a less burdensome method for addressing the purpose of the amended regulation? 14 **Del.C.** requires that we promulgate this regulation.

10. What is the cost to the state and to the local school boards of compliance with the adopted regulation? There is no additional cost to local school boards for compliance with the regulation.

1595 Certification Programs for Leaders in Education

1.0 Content

This regulation shall apply to Certification Programs for Leaders in Education, pursuant to 14 **DE Admin. Code** 1591 School Principal and Assistant School Principal, 14 **DE Admin. Code** 1592 Certified Central Office Personnel, 14 **DE Admin. Code** 1593 Superintendent or Assistant Superintendent, and 14 **DE Admin. Code** 1594 Special Education Director.

(Break in Continuity of Sections)

4.0 Application Approval Procedure

- 4.1 An application for a certification program pursuant to 14 **DE Admin. Code** 1595 Certification Programs for Leaders in Education will be reviewed in the following sequence:
- 4.1.1 Applications must be submitted to the Standards Board well in advance of the prospective initiation of the program or course of study's cohort to allow for the review and approval process to be completed.
 - 4.1.2 A designee of the Standards Board will screen each application for completeness. Incomplete applications will not be processed and the applicant will be notified.
 - 4.1.3 The complete application will be forwarded to the Standards Board's Licensure and Certification Criteria Committee for initial review and recommendation. The complete application will also be forwarded to the Secretary or his designee.
 - 4.1.4 The recommendation and comments from the Standards Board's Licensure and Certification Criteria Committee shall be submitted to the Standards Board for consideration. The Standards Board shall decide upon a recommendation as to the approval of the program, the duration, and any special considerations or conditions.
 - 4.1.5 ~~The recommendation of the Standards Board shall be submitted to the State Board for their recommendation to approve or deny the application.~~
 - 4.1.6 ~~The Standards Board's and State Board recommendations shall be submitted to the Secretary for the final approval or denial of the certification program.~~
- 4.2 Programs are initially approved for two (2) cohorts. However if the recommendations of the Standards Board's Licensure and Certification Criteria Committee, and the Standards Board ~~and the State Board~~ are unanimous in their recommendation to approve for three (3) cohorts, the Secretary may approve the program for three (3) cohorts.

- 4.3 Program Renewal
- 4.3.1 Renewal is necessary for continued program approval.
- 4.3.1.1 The renewal request must be made at least nine (9) months prior to approval expiration and must contain an updated application including program success and evaluation information.
- 4.3.1.2 The applicant must submit all requested information for continued approval.
- 4.3.1.3 The applicant is responsible for establishing the effectiveness of the program.
- 4.3.1.4 A certification program may be renewed for up to an additional three (3) cohorts, contingent upon meeting all requirements.
- 4.3.2 ~~The Standards Board recommendations, program data and evaluations will be considered to determine the continued approval of the program. The renewal application, including the program data and evaluations, and any additional information submitted by the applicant, shall be submitted to the Secretary and shall be considered in the approval determination.~~
- 4.3.3 ~~Additional evidence submitted to the Standards Board may also be considered.~~
- 4.3.4 A designee of the ~~Standards Board~~ Secretary ~~will~~ shall screen each renewal application for completeness. Incomplete applications will not be processed and the applicant will be notified. Complete renewal applications will be forwarded to the State Board.
- 4.3.4.1 ~~The complete renewal application will~~ shall be forwarded to the ~~Standards Board's Licensure and Certification Criteria Committee~~ for initial review and recommendation. ~~The complete renewal application will also be forwarded to the Secretary or his designee~~ State Board. The Secretary or designee shall provide a presentation to the State Board outlining the renewal application.
- 4.3.4.2 ~~The recommendation and comments of the Standards Board's Licensure and Certification Criteria Committee shall be submitted to the Standards Board for consideration. The Standards Board shall make a recommendation as to the renewal of the program, the duration, and any special considerations or conditions.~~
- 4.3.4.3 ~~The recommendation of the Standards Board shall be submitted to the State Board for their recommendation to approve or deny the renewal application.~~
- 4.3.4.2 ~~The Standards Board and State Board recommendations shall be submitted to the Secretary for the final approval or denial of the renewal application. After review of the renewal application the State Board shall submit their recommendation to the Secretary for the final approval or denial of the renewal application.~~
- 4.3.3.3 The Secretary shall review and make a decision as to the renewal of the program, the duration, and any special considerations or conditions.
- 4.3.5 ~~Renewal of a certification program may be for up to an additional three (3) cohorts, contingent upon meeting all requirements.~~

***Please Note: As the rest of the sections were not amended they are not being published. A copy of the regulation is available at:**

1595 Certification Programs for Leaders in Education

DEPARTMENT OF HEALTH AND SOCIAL SERVICES
DIVISION OF MEDICAID AND MEDICAL ASSISTANCE
Statutory Authority: 31 Delaware Code, Section 512 (31 **Del.C.** §512)

PUBLIC NOTICE

Private Duty Nursing Services

In compliance with the State's Administrative Procedures Act (APA - Title 29, Chapter 101 of the Delaware Code), 42 CFR §447.205, and under the authority of Title 31 of the Delaware Code, Chapter 5, Section 512, Delaware Health and Social Services (DHSS) / Division of Medicaid and Medical Assistance proposed to amend the Title XIX Medicaid State Plan and the Delaware Medical Assistance Program Provider Specific Policy Manual to revise and clarify Private Duty Nursing (PDN) services, specifically, *service requirements, coverage criteria, provider qualifications, service limitations and reimbursement methodology.*

Any person who wishes to make written suggestions, compilations of data, testimony, briefs or other written materials concerning the proposed new regulations must submit same to Sharon L. Summers, Planning, Policy and Quality Unit, Division of Medicaid and Medical Assistance, 1901 North DuPont Highway, P.O. Box 906, New Castle, Delaware 19720-0906 or by fax to 302-255-4425 by October 30, 2015. Please identify in the subject line: *Private Duty Nursing Services.*

The action concerning the determination of whether to adopt the proposed regulation will be based upon the results of Department and Division staff analysis and the consideration of the comments and written materials filed by other interested persons.

SUMMARY OF PROPOSAL

The purpose of this notice is to advise the public that Delaware Health and Social Services/Division of Medicaid and Medical Assistance is proposing to amend the Title XIX Medicaid State Plan and the Delaware Medical Assistance Program (DMAP) Provider Specific Policy Manual to revise and clarify Private Duty Nursing (PDN) services, specifically, *service requirements, coverage criteria, provider qualifications, service limitations and reimbursement methodology.*

Statutory Authority

- Section 1905(a)(8) of the Social Security Act, *includes private duty nursing services in the definition of medical assistance*
- 42 CFR §440.80, *defines Private Duty Nursing Services*
- 42 CFR §447.205, *Public notice of changes in statewide methods and standards for setting payment rates*

Background

Private Duty Nursing (PDN) is an optional Title XIX Medicaid service authorized by Section 1905(a)(8) of the Social Security Act and 42 CFR §440.80. PDN services means nursing services for beneficiaries who require more individual and continuous care than is available from a visiting nurse or routinely provided by the nursing staff of the hospital or skilled nursing facility. These services are provided—

- a) By a registered nurse or a licensed practical nurse;
- b) Under the direction of the beneficiary's physician; and
- c) To a beneficiary in one or more of the following locations at the option of the State—
 1. His or her own home;
 2. A hospital; or
 3. A skilled nursing facility.

Summary of Proposal

Purpose

To clarify the requirements and reimbursement provisions that governs Private Duty Nursing (PDN) services.

Proposal

The Delaware Medical Assistance Program (DMAP) Provider Manual is written specifically to address the contractual and regulatory requirements of delivering health care services to Delaware Medicaid beneficiaries. From time to time the Division of Medicaid and Medical Assistance (DMMA) update and revise these manuals as our policies or regulatory requirements change. Private Duty Nursing (PDN) Services are those medically necessary services related to the coverage described in the Private Duty Nursing Policy Provider Specific Manual. The proposed rule revises language in the designated provider manual to clarify Medicaid policy on service coverage for Private Duty Nursing services. Amendments to this rule include:

- Language throughout the rule has been restructured, replaced, relettered or in the case of redundancies, eliminated for clarity purposes.
- Revise language to clarify who is eligible to receive private duty nursing services.
- Revisions were made for clarification and consistency purposes that the number of hours of service to be authorized is determined by “Medical Necessity”.
- A definition of “technology dependent” was added.
- Language was added to clarify eligible private duty nursing providers and to reflect current practices.
- Deleted coverage and reimbursement language and the Healthcare Common Procedure Coding System (HCPCS) procedure code in Appendix B of Section 7, regarding self-employed nurses as PDN services cannot be provided by self-employed nurses.
- As PDN services can only be covered by DMAP if prior authorized, inserted language detailing how authorization for PDN services is obtained.
- Revised language to clarify how medically necessary hours are determined.

For conditions of coverage and payment, the Division of Medicaid and Medical Assistance (DMMA) proposes to amend Attachment 4.19-B of the Medicaid State Plan to reflect the above-referenced changes. Upon CMS approval, the proposed state plan amendment (SPA) is effective for dates of service on or after October 2, 2015.

Public Notice

In accordance with the *federal* public notice requirements established at Section 1902(a)(13)(A) of the Social Security Act and 42 CFR 447.205 and the *state* public notice requirements of Title 29, Chapter 101 of the Delaware Code, Delaware Health and Social Services (DHSS)/Division of Medicaid and Medical Assistance (DMMA) gives public notice and provides an open comment period for thirty (30) days to allow all stakeholders an opportunity to provide input to the requirements and reimbursement provisions governing private duty nursing services. Comments must be received by 4:30 p.m. on October 30, 2015.

Centers for Medicare and Medicaid Services Review and Approval

The provisions of this state plan amendment (SPA) relating to coverage and payment methodology for Private Duty Nursing (PDN) services are subject to approval by the Centers for Medicare and Medicaid Services (CMS). The draft SPA page(s) may undergo further revisions before and after submittal to CMS based upon public comment and/or CMS feedback. The final version may be subject to significant change.

Provider Manuals Update

Also, upon CMS approval, the applicable Delaware Medical Assistance Program (DMAP) Provider Policy Specific Manuals will be updated. Manual updates, revised pages or additions to the provider manual are issued, as required, for new policy, policy clarification, and/or revisions to the DMAP program. Provider billing guidelines or instructions to incorporate any new requirement may also be issued. A newsletter system is utilized to distribute new or revised manual material and to provide any other pertinent information regarding manual updates. DMAP provider manuals and official notices are available on the DMAP website: <http://www.dmap.state.de.us/home/index.html>

Fiscal Impact Statement

The following fiscal impact is projected:

	Federal Fiscal Year 2016	Federal Fiscal Year 2017
General (State) funds	\$ 77,930.05	\$ 80,267.95
Federal funds	\$ 64,200.26	\$ 66,126.27

**DMMA PROPOSED REGULATION #15-17a
REVISIONS:**

ATTACHMENT 4.19-B
Page 10

PROPOSED REGULATIONS

STATE PLAN UNDER TITLE XIX OF THE SOCIAL SECURITY ACT
STATE: DELAWARE

METHODS AND STANDARDS FOR ESTABLISHING PAYMENT RATES
FOR PRIVATE DUTY NURSING SERVICES
42 CFR 440.80

~~DELAWARE RATES FOR PRIVATE DUTY NURSING~~

Private duty nursing (PDN) services provided to eligible Delaware Medical Assistance Program (DMAP) ~~clients~~ individuals are reimbursed using prospectively determined rates. The unit of service for agency providers is one (1) hour, ~~and for self-employed nurses is 15 minutes.~~ A weekly maximum limit is established for each ~~client~~ individual by the DMAP based on the authorized services.

Rates for agency services are reviewed annually. The rate will relate to the lowest prevailing usual and customary charge, as determined by a survey of all private duty nursing service agencies. Agencies will be reimbursed the lower of their usual and customary charges or the maximum rate.

~~Rates for self-employed nurses will be individually negotiated, but will not exceed a predetermined percentage of the agency rate. Self-employed nurses agree to rates that do not exceed 60% of the agency rate for LPNs and 70% of the agency rate for RNs. Rates may not be renegotiated more than once annually except in extenuating circumstances. Increases will be limited to the normal medical inflation used by DMAP. Self-employed nurses will be reimbursed the lower of their usual and customary charges or the maximum rate. DMAP assures that both public and private providers are paid the same rates.~~

Providers are not required to submit cost reports to the DMAP. There are no retrospective settlements on claims paid.

The baseline PDN reimbursement rate will normally represent services provided by one nurse to one ~~client~~ individual. An adjusted reimbursement rate per ~~client~~ individual will be established for medically ~~appropriate~~ necessary PDN services provided by a single nurse for up to three (3) clients. Maximum rates are established according to the following table:

One client individual:	Rate for One =	100% of established baseline rate
Two clients individuals:	Rate for Each =	50% of 143% of baseline rate
Three clients individuals:	Rate for Each =	33% of 214% of baseline rate

~~For example, if the baseline rate for one client is \$21.00 per hour, the reimbursement rate for multiple client settings is as follows:~~

One Client:	Rate for each individual =	\$21.00 per hour (Baseline)
Two Clients:	Rate for each individual =	\$15.00 per hour
Three Clients:	Rate for each individual =	\$15.00 per hour

The fee schedule and any annual/periodic adjustments to the fee schedule and effective dates are available on the Delaware Medical Assistance Program (DMAP) website at: <http://www.dmap.state.de.us/downloads/feeschedules.html>

The rates of service were set as of October 2, 2015 and are effective for services provided on or after that date.

Except as otherwise noted in the plan, payment for these services is based on State-developed fee schedule rates, which are the same for both governmental and private providers of private duty nursing services.

DMMA PROPOSED REGULATION #15-17b REVISIONS:

DELAWARE MEDICAL ASSISTANCE PROGRAM Private Duty Nursing Program Provider Specific Policy

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1.0 Overview

1.1 Service Definition

1.2 Technology Dependent Definition

2.0 Qualified Providers

2.1 General Criteria

3.0 Documentation

3.1 Provider Requirements

4.0 Reimbursement

4.1 Methodology

~~4.2 Counting of 15 Minute Increments~~

5.0 Prior Authorization

5.1 Requirements

5.2 General Guidelines for Private Duty Nursing Services Authorization

5.3 Determination of Hours Needed

6.0 Reserved

7.0 Appendix B – HCPCS Procedure Codes

1.0 Overview

~~Private Duty Nursing (PDN) services are provided to the majority of Medicaid clients through a Managed Care Organization (MCO). Effective July 1, 2007, all PDN services are included in the MCO benefits package. All Medicaid clients who are enrolled with an MCO must receive PDN services through the MCO. Medicaid clients age 21 years and over are eligible for up to eight hours of PDN daily. Children under age 21 are covered under the Early and Periodic Screening, Diagnosis, and Treatment (EPSDT) Program and may exceed this limit if medically necessary.~~

Effective July 1, 2007, Private Duty Nursing (PDN) services are provided to the majority of Medicaid individuals through a Managed Care Organization (MCO). MCOs are required to provide, at a minimum, coverage of services described in this provider specific policy manual. The MCO's contract with the Division of Medicaid and Medical Assistance (DMMA) may include additional obligations. Services provided to individuals enrolled in an MCO are not billed to the Delaware Medical Assistance Program (DMAP). The provider shall provide services only under arrangement with the MCO.

~~Providers shall refer to the Managed Care section of the General Policy Manual for the required forms and procedures related to Diamond State Partners (DSP) additional information related to PDN services.~~

This manual reflects the policies as they relate to:

- Medicaid ~~clients~~ individuals who are exempt from managed care coverage (see list of those exempt from managed care coverage in the Managed Care section of the General Policy Manual).
- Medicaid ~~clients~~ individuals whose medical need requires private duty nursing services in a non-institutional setting.
- Medical Necessity as defined in Appendix H of the General Policy Manual.

1.1 Service Definition

1.1.1 PDN services are available through the DMAP for ~~clients~~ individuals who require more individual and continuous skilled care than as defined in 42 CFR 440.70, Home Health Services.

1.1.2 PDN services may be provided by a single nurse to an individual or to multiple ~~clients~~ individuals in

a non-institutional group setting as described above. The nurse-client ratio will not exceed ~~3~~ three (3) clients individuals per nurse unless authorized by the Medical Review Team.

1.1.3 Arrangements for multiple ~~clients~~ individuals in non-institutional settings may be considered if such arrangements are medically appropriate and advantageous to both the ~~client~~ individual and to DMAP.

1.1.4 PDN services are provided to Medicaid ~~clients~~ individuals in their home or other DMAP approved community setting as an alternative to more expensive institutional care. Generally, the total cost of PDN services shall not exceed the cost of care provided in an institutional setting.

1.2 Technology Dependent Definition

1.2.1 Technology Dependent means an individual who has a chronic disability which requires the routine use of a specific medical device to compensate for the loss of a life-sustaining body function and requires daily, ongoing care or monitoring by trained personnel.

2.0 Qualified Providers

2.1 General Criteria

2.1.1 Private duty nursing may be provided by any registered nurse (RN), licensed practical nurse (LPN) or certified registered nurse practitioner (CRNP) who has a professional license from the State to provide nursing services.

2.1.2 Home health agencies that employ and provide qualified nursing staff as described above ~~or self-employed qualified nursing staff~~ are considered qualified providers and may enroll as PDN providers.

~~2.1.2.1 Individual nurses, either employed by an agency or self-employed may provide no more than 16 hours of PDN services in a 24 hour period except in an emergency situation which will be reviewed by the Medical Review Team. The maximum number of hours provided by an individual nurse will be restricted to a level that can safely and reasonably be provided. No individual nurse will be authorized to work more than a sixteen (16) hour shift per day except in an emergency situation which will be reviewed and then approved or denied by the Medical Review Team.~~

3.0 Documentation

3.1 Provider Requirements

3.1.1 The private duty nursing provider is required to keep the following documentation in the patient's record:

3.1.1.1 Documentation of orientation to client's care needs and demonstration of nursing skills necessary to deliver prescribed care.

3.1.1.2 A written plan of care that is established, signed and dated by the attending practitioner which includes orders for medications, treatments, nutritional requirements, activities permitted, special equipment and other ordered therapies.

3.1.1.3 Orders renewed, signed and dated at least once every ~~60~~ sixty (60) days or sooner as the severity of the ~~client's~~ individual's conditions requires.

3.1.1.4 Documentation that the nurse promptly alerts the practitioner to any changes that suggest a need to alter the plan of care.

3.1.1.5 Adequate documentation dated and signed by the nurse performing the service.

4.0 Reimbursement

4.1 Methodology

4.1.1 Private duty nursing services provided to eligible DMAP ~~clients~~ individuals are reimbursed using prospectively determined rates. The unit of service for agency providers is one (1) hour, ~~and for self-employed nurses is 15 minutes. A weekly maximum limit is established for each client by the DMAP based on the authorized services. The number of weekly hours of PDN services authorized for each individual will be based on the individual's needs and documented in the plan of care.~~

4.1.2 Rates for agency services are reviewed annually. The rate will relate to the lowest prevailing usual and customary charge, as determined by a survey of all private duty nursing service agencies. Agencies will be reimbursed the lower of their usual and customary charges or the maximum rate.

~~4.1.3 Rates for self-employed nurses will be individually negotiated, but will not exceed a predetermined percentage of the agency rate. Rates may not be renegotiated more than once annually except in extenuating circumstances. Increases will be limited to the normal medical inflation used by DMAP. Self-employed nurses will~~

~~be reimbursed the lower of their usual and customary charges or the maximum rate.~~

~~4.1.4 4.1.3~~ Providers are not required to submit cost reports to the DMAP. There are no retrospective settlements on claims paid.

~~4.1.5 4.1.4~~ The baseline PDN reimbursement rate will normally represent services provided by one nurse to one ~~client~~ individual. An adjusted reimbursement rate per ~~client~~ individual will be established for medically appropriate PDN services provided by a single nurse for up to three ~~(3) clients~~ individuals. Maximum rates are established according to the following table:

rate	One client individual:	Rate for One =	100% of established baseline
	Two clients individuals:	Rate for Each =	50% of 143% of baseline rate
	Three clients individuals:	Rate for Each =	33% of 214% of baseline rate

~~For example, if the baseline rate for one individual is \$21.00 per hour, the reimbursement rate for multiple individual settings is as follows:~~

One Individual:	Rate for each individual =	\$21.00 per hour (Baseline)
Two Individuals:	Rate for each individual =	\$15.00 per hour
Three Individuals:	Rate for each individual =	\$15.00 per hour

4.2 Counting of 15 Minute Increments

~~4.2.1~~ Visits are to be rounded to the nearest 15 minute increment. The following chart is to be used to assist providers in determining the number of units to be billed:

1 unit-	1 minute to <23 minutes
2 units-	>23 minutes to <38 minutes
3 units-	>38 minutes to <53 minutes
4 units-	>53 minutes to <68 minutes
5 units-	>68 minutes to <83 minutes
6 units-	>83 minutes to <98 minutes
7 units-	>98 minutes to <113 minutes
8 units-	>113 minutes to <128 minutes

~~NOTE: Unless prior authorized, providers cannot exceed the limited number of units assigned to each private duty nursing service.~~

5.0 Prior Authorization

5.1 Requirements

~~5.1.1~~ Private duty nursing services must be prior authorized by DMAP before the services are rendered.

~~5.1.2~~ Private duty nursing services for clients who are eligible for the Elderly and Disabled HCBS Waiver program, the Assisted Living Medicaid Waiver program, or the Acquired Brain Injury Medicaid Waiver, must be prior authorized by the nursing staff of the Division of Services for Aging and Adults with Physical Disabilities (DSAAPD). See the Index in back of General Policy for the appropriate address and telephone number.

~~5.1.3~~ All other requests for prior authorization should be directed to the Medical Prior Authorization Units. The New Castle County unit is located in the Robscott Building and the Kent/Sussex County unit is located in Georgetown (see the Index section in the back of General Policy for the address and telephone number of each Prior Authorization Unit).

~~5.1.2~~ For individuals not enrolled in an MCO, prior authorization requests for PDN services should be directed to the appropriate Medicaid office (Robscott Building in Newark for New Castle County and Thurman Adams State Service Center in Georgetown for Kent and Sussex Counties). Contact information for these offices may be found in the Index of the General Policy Manual.

~~5.1.4~~ The maximum number of hours provided by an individual nurse will be restricted to a level that can safely and reasonably be provided. No individual nurse will be authorized to work more than a 16 hour shift per day except in an emergency situation which will be reviewed by the Medical Review Team.

~~5.1.5~~ 5.1.3 PDN hours must be used for the period of time in which they are authorized. If the authorized hours are not used they the unused hours cannot be carried over into another time period.

5.1.4 Prior approval of services does not guarantee that individuals are eligible for Medicaid. Providers must verify that individuals are eligible for Medicaid at the time services are furnished and must determine if Medicaid beneficiaries have other health insurance.

5.2 General Guidelines for Private Duty Nursing Services Authorization

5.2.1 Initially, a Division of Medicaid and Medical Assistance (DMMA) Medical Services Nurse completes a ~~face-to-face~~ medical assessment. The client individual will receive a written notice of approval or non-approval for PDN services.

5.2.2 The on-going need for PDN care is routinely/periodically re-evaluated. ~~DMMA may determine that because of parent/caregiver work schedule, stability of the patient, and other factors, that PDN hours may be reduced or increased. DMMA may determine that PDN hours may be increased based on medical necessity or reduced based on medical necessity accompanied by a change in circumstances or other good causes.~~

~~5.2.3 PDN will only be authorized when there is at least one caregiver willing and able to accept responsibility for the client's care when the nurse is not available. DMMA expects that parents/caregivers be willing and capable to accept responsibility for their relative/child's care. If the parent/caregiver cannot or will not accept responsibility for the client's care when PDN is not authorized or available, the client is deemed not to be in a safe environment and PDN will not be authorized.~~

PDN services will only be authorized when there is at least one caregiver willing and able to accept responsibility for the individual's care when the nurse is not available. DMAP expects that caregivers be willing and capable to accept responsibility for their individual's care. If the caregiver cannot or will not accept responsibility for the individual's care when PDN services are not authorized or available, the individual is deemed not to be in a safe environment and PDN services will not be authorized.

5.2.4 ~~DMMA~~ DMAP cannot guarantee that PDN services will be available from a specific provider.

~~5.2.5 DMMA~~ DMAP reimburses for medically necessary transportation through a Medicaid transportation broker. ~~DMMA expects the parent/caregiver to accompany the client in transport. If, because of employment or school, the parent/caregiver cannot accompany the client, the prior authorized PDN may accompany the client. If the client is transported to a medical appointment or the hospital with the PDN, as soon as the parent/caregiver arrives, the PDN service is no longer required. PDN will not be authorized for a nurse to accompany a client to a medical appointment or hospital stay when the parent/caregiver is available. PDN services will be authorized for transportation when medically necessary, as determined on an individualized basis.~~

~~5.2.6 PDN may be approved to accompany school age children with a compromised airway or other DMAP approved high risk condition in transport to school and to provide medically necessary care during school hours. PDN services may be authorized during the school day with parental consent, as indicated by the agreement with the child's Individual Education Plan (IEP), if DMAP determines that a school is unable to meet the medical needs of school age children who are technology dependent or for whom DMAP has determined these services to be otherwise medically necessary. This may include accompanying the children during the transport to and from school and providing medically necessary care during school hours.~~

~~5.2.7 DMMA may approve PDN services may be approved~~ when a child is home sick with a cold, virus or normal childhood disease or there are unplanned school closures or inclement weather days. However, additional hours must be ~~prior~~ authorized. Home health agencies may not be able to provide "on demand or same day service." Families Parents/caregivers should contact DMMA or their MCO as soon as they know about an unplanned school closure, etc. and ~~find a willing and available provider.~~

~~5.2.8 DMMA may approve PDN services may be approved~~ to cover summer vacation as well as scheduled school year holiday vacations for school age children if ~~the parent/caregiver requests coverage timely it is determined that services are medically necessary~~ Absence of parents/guardian from the home for employment or work-related education reasons must be documented.

~~5.2.9 DMMA projects a sufficient amount of hours per day. If the hours authorized are not used on a particular day, the hours do not carry over to the next day or weekend nor can the hours be "banked" to be used at a later time.~~

5.3 Determination of Hours Needed

5.3.1 ~~DMMA does not approve 24 hour on-going PDN services. DMMA may approve 24 hours PDN for 3-4 days (trach and vent child/adult) to help parents/caregivers adjust and ensure all equipment is functioning. PDN reduces to 20 hours for 1-2 days. PDN then reduces to 18 hours then reduces to 16 hours, the maximum~~

~~number of hours a day authorized for children (8 hours for adults). PDN services may be approved for up to twenty-four (24) hours per day for up to three to four (3-4) days when medically necessary to help caregivers adjust and ensure all equipment is functioning following a transition or discharge from hospital or other facility to the community. Once the transition is successfully accomplished, PDN services will be gradually reduced based upon individually assessed medical necessity.~~

~~5.3.2 PDN may be reduced further by school enrollment or attendance at a Prescribed Pediatric Extended Care (PPEC) facility. A home health aid or Certified Nursing Assistant (CNA) may be approved for some clients in lieu of PDN when appropriate and cost effective.~~

~~5.3.32 An increase in hours may be approved if additional hours will avoid hospitalization or institutional placement as a cost effective measure. This will depend on the medical necessity, the amount of additional hours needed and the letter of medical necessity from the admitting individual's primary care physician (PCP).~~

~~5.3.43 If a parent/caregiver needs hours for sleep and skilled care is required for a client with a compromised airway (trach/vent) or other DMAP approved high risk condition during this sleep time, PDN is approved for a maximum of up to eight hours, generally eight hours within the range of 10pm through 8am. During those hours when a parent/caregiver needs to sleep, and a high risk or technology dependent individual continues to require skilled care, PDN services may be approved for a maximum of eight (8) additional hours.~~

~~5.3.54 PDN services is may be adjusted to cover work and travel time of the parent/caregiver or to cover education (class schedule) and travel time of the parent, if there is not another parent/caregiver in the home. PDN is authorized for up to 40 hours per week plus an additional five hours for travel to and from work or school. Parent/guardian work hours/schedule must be verified. PDN for education is for employment related classes, vo tech, GED, high school, college, etc. and must be documented. based on the availability of the parent/caregiver as determined by DMAP. "Availability" is individually determined based on a totality of circumstances. DMAP requires that documentation of parent/caregiver unavailability be provided annually, or when/if changes occur.~~

~~5.3.6 If medical care is needed, but it is less than skilled care, DMMA may authorize a CNA or home health aid to provide medically necessary care if it is deemed to be the most appropriate and cost effective.~~

~~5.3.5 PDN services may be reduced by the introduction of a Home Health Aide (HHA), Certified Nursing Assistant (CNA) or Personal Attendant and may be approved for some individuals in lieu of PDN services when appropriate and cost effective.~~

(Break in Continuity of Sections)

7.0 Appendix B – HCPCS Procedure Codes

The PDN provider must use the following procedure codes when billing the DMAP for private duty nursing services effective for dates of services on and after 7/1/02.

Codes	Description
T4000 minutes	Private duty/independent nursing service(s) licensed, up to 15
S9123	Nursing care, in the home, by registered nurse, per hour
S9124	Nursing care, in the home, by licensed practical nurse, per hour

DIVISION OF MEDICAID AND MEDICAL ASSISTANCE

Statutory Authority: 31 Delaware Code, Section 512 (31 **Del.C.** §512)

PUBLIC NOTICE

Reimbursement Methodology for Home Health Services

In compliance with the State's Administrative Procedures Act (APA - Title 29, Chapter 101 of the Delaware

Code), 42 CFR §447.205, and under the authority of Title 31 of the Delaware Code, Chapter 5, Section 512, Delaware Health and Social Services (DHSS) / Division of Medicaid and Medical Assistance (DMMA) is proposing to amend the Delaware Title XIX Medicaid State Plan regarding Home Health services, specifically, *to update the methods and standards governing reimbursement methodology language for home health services.*

Any person who wishes to make written suggestions, compilations of data, testimony, briefs or other written materials concerning the proposed new regulations must submit same to Sharon L. Summers, Planning, Policy and Quality Unit, Division of Medicaid and Medical Assistance, 1901 North DuPont Highway, P.O. Box 906, New Castle, Delaware 19720-0906 or by fax to 302-255-4425 by October 30, 2015. Please identify in the subject line: Reimbursement Methodology for Home Health Services.

The action concerning the determination of whether to adopt the proposed regulation will be based upon the results of Department and Division staff analysis and the consideration of the comments and written materials filed by other interested persons.

SUMMARY OF PROPOSAL

The purpose of this notice is to advise the public that Delaware Health and Social Services/Division of Medicaid and Medical Assistance proposes to amend the Title XIX Medicaid State Plan regarding Home Health Services specifically, *to ensure compliance with federal law and regulations by updating the methods and standards language governing reimbursement methodology for home health services.*

Statutory Authority

- 1902(a)(10)(D) of the Social Security Act, *Home health services*
- 42 CFR 440.70, *Home health services*
- 42 CFR 441.15, *Home health services*
- 42 CFR 441.16, *Home health services requirements for surety bonds*
- 42 CFR 440.70(a)(3), *Medical supplies, equipment, and appliances*
- 42 CFR 440.120, *Prosthetic devices*
- 42 CFR §447.205, *Public notice of changes in Statewide methods and standards for setting payment rates*

Background

Home Health Services provide medically necessary care to an eligible Medicaid recipient whose medical condition, illness, or injury requires the care to be delivered in the recipient's place of residence or other authorized setting. These services promote, maintain, or restore health, or minimize the effects of illness and disability.

Home Health Services, as federally defined and subject to the requirements of 42 CFR 441.15 and 42 CFR 441.16, include not only home health nursing services, but also home health aides; medical supplies, equipment and appliances suitable for use in the home; physical therapy, occupational therapy, and speech pathology and audiology services provided by a home health agency or facility licensed to provide medical rehabilitation services (42 CFR 440.70).

Mandatory Home Health Services are defined as nursing services, home health aide services, and medical supplies, equipment and appliances (42 CFR 440(b)).

Optional Home Health Services are defined as physical therapy, occupational therapy, and speech pathology and audiology services provided by a home health agency or facility licensed to provide medical rehabilitation services (42 CFR 440.70(b)).

Home Health Services are provided to a beneficiary at his/her place of residence or other authorized setting upon physician order as part of a written plan of care. Services include part-time or intermittent visits by a registered nurse; visits by credentialed home health aides employed by a home health agency participating in the Medicaid program; and medical supplies, equipment and appliances required by the beneficiary and suitable for use in the home. In addition, states may choose to have home health agencies provide, when medically necessary and ordered by the beneficiary's physician, physical therapy services, occupational therapy services, and speech pathology and audiology services.

Summary of Proposal

Home Health Services are Medicaid State Plan services that are provided on a part-time and intermittent basis to Medicaid beneficiaries of any age. Home health services include home health nursing, home health aide, and

skilled therapies (physical therapy, occupational therapy, and speech-language pathology).

Purpose

During review and subsequent approval on December 31, 2014 of Delaware's 1915(i) Home and Community State Plan Option Amendment (Pathways to Employment), the Centers for Medicare and Medicaid Services (CMS) performed a program analysis of corresponding coverage sections not originally submitted with this SPA. This analysis revealed that the reimbursement language for home health services fails to comply with 42 CFR 430.10 and 42 CFR 447.252 which implement in part Section 1902(a)(30)(A) of the Social Security Act, to require collectively that States comprehensively describe the methodologies that they use to reimburse service providers. The methodologies must be understandable, clear, unambiguous and auditable. This amendment proposes to revise the payment methodology language for home health services.

Proposal

In order to comport with 42 CFR 430.10 and 42 CFR 447.252, DMMA proposes to clarify existing home health services reimbursement methodology language currently described at Medicaid State plan page Attachment 4.19-B Page 6 by:

- defining the reimbursable unit of service;
- describing payment limitations;
- providing a reference to the provider qualifications per the State Plan;
- publishing location to access State developed fee schedule rates.

Current Methodology:

Providers are reimbursed a prospective determined rate according to each Home Health service rendered.

Proposed Methodology:

The proposed methodology will be a universal rate for each Home Health service type. All providers would receive the same rate for each procedure code. Moreover, as the budget allows, update each rate annually by applying an inflation factor derived from the CMS Home Health Market Basket.

Durable Medical Equipment

Current state plan page Attachment 4.19-B Page 11 list "a nationally recognized pricing system" in the hierarchy of pricing. If there was no pricing found in the Durable Medical Equipment Regional Carrier (DMERC) Region A fee schedule, the Delaware Medical Assistance Program (DMAP) utilized EPIC Plus, a pricing software package produced by the Medical Data Institute (MDI). The EPIC Plus, updated periodically, ensured that the DMAP has the most current products and supplier information available. If no rate is found in the DMERC or the EPIC Plus, the provider's cost/price sheet is used.

MDI notified DMAP that support for the EPIC Plus disk will not be provided beyond June 2015. An amendment to the state plan is proposed to remove the nationally recognized pricing system reference language.

DMAP will continue to utilize the DMERC Region A fee schedule and information received from the DME provider such as catalog pages that include the manufacturer's name, item model number, and costs or a copy of the company's invoice that describes the item and gives an itemized explanation of all charges.

Public Notice

In accordance with the *federal* public notice requirements established at Section 1902(a)(13)(A) of the Social Security Act and 42 CFR 447.205 and the *state* public notice requirements of Title 29, Chapter 101 of the Delaware Code, Delaware Health and Social Services (DHSS)/Division of Medicaid and Medical Assistance (DMMA) gives public notice and provides an open comment period for thirty (30) days to allow all stakeholders an opportunity to provide input to the methods and standards governing payment methodology for home health services. Comments must be received by 4:30 p.m. on October 30, 2015.

CMS Review and Approval

The provisions of this state plan amendment relating to methodology and payment rates of Home Health Services are subject to approval by CMS. The draft SPA page(s) may undergo further revisions before and after submittal to CMS based upon public comment and/or CMS feedback. The final version may be subject to significant change.

PROPOSED REGULATIONS

Provider Manuals Update

Also, upon CMS approval, the applicable Delaware Medical Assistance Program (DMAP) Provider Policy Specific Manuals will be updated. Manual updates, revised pages or additions to the provider manual are issued, as required, for new policy, policy clarification, and/or revisions to the DMAP program. Provider billing guidelines or instructions to incorporate any new requirement may also be issued. A newsletter system is utilized to distribute new or revised manual material and to provide any other pertinent information regarding manual updates.

Fiscal Impact Statement

Home Health Services

The proposed amendment clarifies reimbursement methodology descriptions and standardizes language. An estimated fiscal impact was obtained using State Fiscal Year (SFY) 2014 Home Health paid claim information. The following fiscal impact is projected for Federal Fiscal Years (FFY) 2016 and 2017:

	Federal Fiscal Year 2016	Federal Fiscal Year 2017
General (State) Funds	\$ (2,951.00)	\$ (2,752.00)
Federal Funds	\$ (7,543.00)	\$ (7,948.00)

DMAP's proposal involves no change in the definition of those eligible to receive home health services under Medicaid, and the home health services benefit to eligible beneficiaries remains the same.

Durable Medical Equipment

The proposed amendment updates reimbursement methodology description to reflect current practice; and, as such, DMAP does not anticipate any impact to the General Fund. DMAP's proposal involves no change in the definition of those eligible to receive durable medical equipment (DME) and supplies under Medicaid, and the DME services benefit to eligible beneficiaries remains the same.

DMMA PROPOSED REGULATION #15-18a REVISION:

ATTACHMENT 4.19-B
Page 6

STATE PLAN UNDER TITLE XIX OF THE SOCIAL SECURITY ACT
STATE: DELAWARE

METHODS AND STANDARDS FOR ESTABLISHING PAYMENT RATES –
OTHER TYPES OF CARE

PAYMENTS FOR MEDICAL AND REMEDIAL CARE AND SERVICES

HOME HEALTH SERVICES

42 CFR 440.70

Home Health Services

1. ~~Providers of Home Health services shall be reimbursed prospectively determined rates according to standard HCPCS definitions.~~
2. ~~Providers will be prospectively reimbursed the lower of their Usual and Customary charge or the Medicaid rate.~~

Home Health Services are reimbursed as follows:

Home Health Services are reimbursed in accordance with 42 CFR 42 CFR 440.70 and when provided as defined in Attachment 3.1-A of this State Plan, subject to the requirements of 42 CFR 441.15 and 42 CFR 441.16.

Home Health agencies must be certified by Medicare and be properly licensed by the State in which they are located.

Payment for Home Health Services shall be reimbursed as follows:

The rates are prospective and are arrayed to determine the seventy-fifth (75th) percentile for each procedure code. The rates are then inflated (if the budget allows) by the four (4) quarter moving average within the CMS Home Health Market Basket Index. The inflated average cost is per fifteen (15) minutes of each agency. Supply costs will be reimbursed as part of the skilled nursing and home health aide prospective rates.

ATTACHMENT 4.19-B
Page 6.1

STATE PLAN UNDER TITLE XIX OF THE SOCIAL SECURITY ACT

STATE: DELAWARE

METHODS AND STANDARDS FOR ESTABLISHING PAYMENT RATES –
OTHER TYPES OF CARE
PAYMENTS FOR MEDICAL AND REMEDIAL CARE AND SERVICES

HOME HEALTH SERVICES CONTINUED

42 CFR 440.70

An inflation factor will be applied to the prior year's rates to determine the current year's rates. The inflation indices are obtained from the CMS Home Health Market Basket Index.

The agency's fee schedule rate is based upon the Home Health cost of services for a Home Health Aide, Skilled Nurse, Physical Therapist, Occupational Therapist, and a Speech Therapist.

The fee schedule and any annual periodic adjustments to the fee schedule are published on the Delaware Medical Assistance Program (DMAP) website at: <http://www.dmap.state.de.us/downloads/feeschedules.html>

Except as otherwise noted in the plan, State-developed fee schedule rates are the same for both government and private providers.

**DMMA PROPOSED REGULATION #15-18b
REVISION:**

ATTACHMENT 4.19-B
Page 11

STATE PLAN UNDER TITLE XIX OF THE SOCIAL SECURITY ACT

STATE: DELAWARE

METHODS AND STANDARDS FOR ESTABLISHING PAYMENT RATES –
OTHER TYPES OF CARE

PAYMENTS FOR MEDICAL AND REMEDIAL CARE AND SERVICES

Reimbursement for Assistive Technologies and Supplies

PROPOSED REGULATIONS

~~DURABLE MEDICAL EQUIPMENT (DME), SUPPLIES, APPLIANCES, ORTHOTICS AND PROSTHETICS~~

Durable Medical Equipment, Appliances, Prosthetics, Orthotics, and Supplies

42 CFR 440.70

In accordance with 42 CFR 440.70, the Delaware Medical Assistance Program (DMAP) will reimburse Durable Medical Equipment (DME) providers for the purchase/rental of medical equipment, appliances, orthotics and prosthetics and the purchase of medical supplies when ordered by a medical practitioner.

Reimbursement is determined by the DMAP based on one of the following:

- The Medicare fee schedule received yearly from the Region A - Durable Medical Equipment Regional Carrier (DMERC) OR
- ~~A nationally recognized pricing system OR~~
- Information received from the DME provider such as catalog pages that include manufacturer's name, item model number, and costs or a copy of the company's invoice that describes the item and gives an itemized explanation of all charges. (It is not permissible for the DME provider to "roll in" other expenses such as labor, delivery, fittings, etc.).

Except where there is a Medicare fee established, DMAP pays the lower of:

- Provider's usual and customary charges
- Cost + 20% (includes administration fee)
- List price.

Augmentative and Alternative Communication Devices/Systems

The reimbursement for augmentative and alternative communication devices/systems is determined based on documented actual cost to the provider for the device plus twenty percent (20%) on the first \$1,000 and five percent (5%) on the balance, or the provider's usual and customary charge for the device, whichever is lower.

The fee schedule and any annual periodic adjustments to these rates are published on the Delaware Medical Assistance Program (DMAP) website at: <http://www.dmap.state.de.us/downloads/feeschedules.html>

Except as otherwise noted in the plan, State-developed fee schedule rates are the same for both government and private individual providers.

DIVISION OF MEDICAID AND MEDICAL ASSISTANCE

Statutory Authority: 31 Delaware Code, Section 512 (31 **Del.C.** §512)

PUBLIC NOTICE

Reimbursement Methodology for State Plan Personal Care Services

In compliance with the State's Administrative Procedures Act (APA - Title 29, Chapter 101 of the Delaware Code), 42 CFR §447.205, and under the authority of Title 31 of the Delaware Code, Chapter 5, Section 512, Delaware Health and Social Services (DHSS) / Division of Medicaid and Medical Assistance (DMMA) is proposing to amend the Delaware Title XIX Medicaid State Plan regarding State Plan Personal Care Services, specifically, regarding State Plan Personal Care Services (PCS), specifically, *to remove personal care as a service option from the Medicaid State Plan as coverage of PCS will be provided under the Home Health Services benefit.*

Any person who wishes to make written suggestions, compilations of data, testimony, briefs or other written

materials concerning the proposed new regulations must submit same to Sharon L. Summers, Planning, Policy and Quality Unit, Division of Medicaid and Medical Assistance, 1901 North DuPont Highway, P.O. Box 906, New Castle, Delaware 19720-0906 or by fax to 302-255-4425 by October 30, 2015. Please identify in the subject line: Sunset State Plan Personal Care Services.

The action concerning the determination of whether to adopt the proposed regulation will be based upon the results of Department and Division staff analysis and the consideration of the comments and written materials filed by other interested persons.

SUMMARY OF PROPOSAL

The purpose of this notice is to advise the public that Delaware Health and Social Services (DHSS)/Division of Medicaid and Medical Assistance (DMMA) proposes to amend the Title XIX Medicaid State Plan regarding State Plan Personal Care Services (PCS), specifically, to *remove personal care as a service option from the Medicaid State Plan* as coverage of PCS will be provided under the Home Health Services benefit.

Statutory Authority

- 1902(a)(24) of the Social Security Act, *Personal Care Services*
- Section 4480 of the State Medicaid Manual, *Personal Care Services*
- 42 CFR 440.167, *Personal care services*
- 1902(a)(10)(D) of the Social Security Act, *Home health services*
- 42 CFR 440.70, *Home health services*
- 42 CFR.447.205, *Public notice of changes in Statewide methods and standards for setting payment rates*

Background

Personal Care Services are an optional Medicaid benefit described under sections 1905(a)(24) and 1902(10) of the Social Security Act and further defined in section 4480 of the State Medicaid Manual.

Section 1905(a)(24) defines personal care services as services furnished to an individual who is not an inpatient or resident of a hospital, Nursing Facility (NF), Intermediate Care Facility for the Mentally Retarded (ICF/MR) or institution for mental diseases that are:

- a. authorized for the individual by a physician in accordance with a plan of treatment or (at the option of the State) otherwise authorized for the individual in accordance with a service plan approved by the State;
- b. provided by an individual who is qualified to provide such services and who is not a member of the individual's family; and,
- c. furnished in a home or other location.
- d. Regulatory oversight is found in 42 CFR 440.167 of the Code of Federal Regulations.

DISCLAIMER: The terminology used to describe people with disabilities has changed over time. Delaware Health and Social Services/Division of Medicaid and Medical Assistance (DHSS/DMMA) supports the use of "People First" language. Federal laws, regulations and policies use the term "intermediate care facilities for the mentally retarded (ICF/MR)". DHSS/DMMA does not endorse this term and uses the accepted term "individuals with intellectual disability" (ID) instead of "mental retardation." However, as ICF/MR is the abbreviation currently used in all Federal requirements, that acronym will be used here. The revised terminology will not alter the meaning of this rule nor will it impact any determinations for eligibility of services.

Personal Care Services (also known in States by other names such as personal attendant services, personal assistance services, or attendant care services, etc.) covered under a State's program may include a range of human assistance provided to persons with disabilities and chronic conditions of all ages which enables them to accomplish tasks that they would normally do for themselves if they did not have a disability. Assistance may be in the form of hands-on assistance (actually performing a personal care task for a person) or cuing so that the person performs the task by him/herself. Such assistance most often relates to performance of activities of daily living (ADLs) and instrumental activities of daily living (IADLs). ADLs include eating, bathing, dressing, toileting, transferring, and maintaining continence. IADLs capture more complex life activities and include personal hygiene, light housework, laundry, meal preparation, transportation, grocery shopping, using the telephone, medication

management, and money management. Personal care services can be provided on a continuing basis or on episodic occasions. Skilled services that may be performed only by a health professional are not considered personal care services.

Summary of Proposal*Purpose*

During review and subsequent approval on December 31, 2014 of Delaware's 1915(i) Home and Community State Plan Option Amendment (Pathways to Employment), the Centers for Medicare and Medicaid Services (CMS) performed a program analysis of corresponding coverage sections not originally submitted with this SPA. This analysis revealed an issue that requires a state plan amendment (SPA) to sunset coverage and reimbursement methodology for Personal Care Services as personal care as a service will be provided as a component of home health services.

Proposal

DHSS/DMMA intends to remove coverage and reimbursement methodology for the Personal Care Services (PCS) option from the Delaware Medicaid State Plan as those services will now be delivered through the Home Health Services benefit. Therefore, the sunset language in the SPA reflects that current coverage for PCS in Attachment 3.1-A and the reimbursement methodology for PCS in Attachment 4.19-B will cease on December 31, 2015.

Public Notice

In accordance with the *federal* public notice requirements established at Section 1902(a)(13)(A) of the Social Security Act and 42 CFR 447.205 and the *state* public notice requirements of Title 29, Chapter 101 of the Delaware Code, Delaware Health and Social Services (DHSS)/Division of Medicaid and Medical Assistance (DMMA) gives public notice and provides an open comment period for thirty (30) days to allow all stakeholders an opportunity to provide input to the coverage, methods and standards governing payment methodology for personal care services. Comments must be received by 4:30 p.m. on October 30, 2015.

CMS Review and Approval

The provisions of this state plan amendment relating to coverage, methodology and payment rates of State Plan Personal Care Services are subject to approval by CMS. The draft SPA page(s) may undergo further revisions before and after submittal to CMS based upon public comment and/or CMS feedback. The final version may be subject to significant change.

Provider Manual Update

Also, upon CMS approval, the applicable Delaware Medical Assistance Program (DMAP) Provider Policy Specific Manuals will be updated. Manual updates, revised pages or additions to the provider manual are issued, as required, for new policy, policy clarification, and/or revisions to the DMAP program. Provider billing guidelines or instructions to incorporate any new requirement may also be issued. A newsletter system is utilized to distribute new or revised manual material and to provide any other pertinent information regarding manual updates.

Fiscal Impact Statement

Personal Care Services will now be delivered through Home Health Services.

This revision imposes no increase in cost on the General Fund as home health services is already a covered benefit under the Delaware Medical Assistance Program (DMAP) to eligible beneficiaries.

DMAP's proposal involves no change in the definition of those eligible to receive personal care services under Medicaid, and the personal care services benefit to eligible beneficiaries remains the same.

**DMMA PROPOSED REGULATION #15-19a
REVISION:**

Revision:	HCFA-PM-91-4 AUGUST 1991	(BPD)	ATTACHMENT 3.1-A Page 9 Addendum OMB No.: 0938
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STATE PLAN UNDER TITLE XIX OF THE SOCIAL SECURITY ACT

State: DELAWARE

LIMITATIONS ON AMOUNT, DURATION AND SCOPE OF MEDICAL AND REMEDIAL CARE AND SERVICES PROVIDED TO THE CATEGORICALLY NEEDY

24.f. Personal Care Services

Coverage for Personal Care Services (PCS) described below will sunset on December 31, 2015 as coverage of PCS will be provided under the Home Health Services benefit.

Eligible recipients of personal care are Medicaid recipients who are disabled by mental illness, alcoholism, or drug addiction as defined in the Medicaid Provider Manual for Community Support Service Programs.

Persons eligible to provide personal care services are those who are qualified as an Assistant Clinician as defined in the Medicaid Provider Manual for Community Support Service Programs.

The recipient's physician must certify medical necessity for personal care services based on a completed comprehensive medical/psycho-social evaluation and treatment plan as defined in the Medicaid Provider Manual for Community Support Service Programs.

DMMA PROPOSED REGULATION #15-19b REVISION:

ATTACHMENT 4.19-B
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STATE PLAN UNDER TITLE XIX OF THE SOCIAL SECURITY ACT

STATE: DELAWARE

METHODS AND STANDARDS FOR ESTABLISHING PAYMENT RATES – OTHER TYPES OF CARE

PAYMENTS FOR MEDICAL AND REMEDIAL CARE AND SERVICES

STATE PLAN PERSONAL CARE SERVICES

Personal Care Services

The payment methodology for Personal Care Services described below will sunset on December 31, 2015 as coverage of PCS will be provided under the Home Health Services benefit.

Payment for personal care services is based on a fee-for-service, the rate for which is set by a rate setting committee (including representatives of the Department of Health and Social Services' Division of Social Services, Management Services, and Alcohol, Drug Abuse and Mental Health) on an annual and provider specific basis.

PROPOSED REGULATIONS

DEPARTMENT OF INSURANCE

OFFICE OF THE COMMISSIONER

Statutory Authority: 18 Delaware Code, Sections 311, 1718 (18 **Del.C.** §§311 and 1718)
18 **DE Admin. Code** 504

PUBLIC NOTICE

504 Continuing Education for Insurance Agents, Brokers, Surplus Lines Brokers and Consultants

INSURANCE COMMISSIONER KAREN WELDIN STEWART hereby gives notice of proposed amended Department of Insurance Regulation 504 relating to Continuing Education for Insurance Agents, Brokers, Surplus Lines Brokers and Consultants. The docket number for this proposed AMENDED regulation is 2929-2015.

The proposed amended regulation makes changes to the requirements for continuing education courses related to flood insurance and for individuals who have been continuously licensed for twenty-five years. The Delaware Code authority for the change is 18 **Del.C.** §§311 and 1718, and 29 **Del.C.** Ch. 101.

The Department of Insurance does not plan to hold a public hearing on the proposed amended regulation. The proposed amended regulation appears below and can also be viewed at the Delaware Insurance Commissioner's website at:

www.delawareinsurance.gov/departments/documents/ProposedRegs/ProposedRegs.shtml

Any person can file written comments, suggestions, briefs, and compilations of data or other materials concerning the proposed amendment. Any written submission in response to this notice and relevant to the proposed regulation must be received by the Department of Insurance no later than 4:30 p.m. EST, Friday, October 30, 2015. Any such requests should be directed to:

Regulatory Specialist Rhonda West
Delaware Department of Insurance
841 Silver Lake Boulevard
Dover, DE 19904
Phone: (302) 674-7379
Fax: (302) 739-5566
Email: rhonda.west@state.de.us

504 Continuing Education for Insurance Agents, Brokers, Surplus Lines Brokers and Consultants *(Break in Continuity of Sections)*

8.0 Licensee's Responsibility

- 8.1 Each licensee shall retain each original course completion certificate for a period of ~~3~~ three (3) years. The course completion certificate may be required in the event of a discrepancy between the licensee's records and the Department's records. Each licensee may be subjected to a Department audit of continuing education requirements. Failure to comply with a Department audit may result in suspension of a licensee's license. Each licensee will have thirty (30) days to produce such records upon request or audit by the Department.
- 8.2 General Requirements. Resident licensees and producers not otherwise exempted shall earn, at a minimum, the number of education credits described below.
 - 8.2.1 Resident licensees required to fulfill continuing education requirements shall complete twenty-four (24) credit hours of Department approved education subjects, three (3) of which shall be in ethics subjects during each biennium reporting period. If the resident producer holds a health license and solicits long term care policies, as part of his/her biennial requirement, the producer must complete at least three (3) hours of training in Delaware long term care insurance that consists of product knowledge, laws, rules and regulations. Any resident licensee who ~~is authorized to write~~

~~homeowners or personal lines coverage shall be required to complete a two (2) hour continuing education course related to~~ writes flood insurance and under the National Flood Insurance Program shall be required to complete a two (2) hour continuing education course related to flood insurance under the National Flood Insurance Program as part of the twenty-one (21) general credit hours necessary to maintain a Delaware resident license.

- 8.2.2 Resident adjusters, public adjusters and Fraternal Agents shall be required to fulfill twelve (12) credit hours of Department approved education subjects, three (3) of which shall be in ethics subjects during each biennial reporting period.
- 8.2.3 Resident licensees will receive a continuing education transcript at least ninety (90) days prior to the end of a license biennium by mail or by electronic access as the Department deems appropriate. The licensee is responsible for reviewing the transcript for accuracy. To dispute the Department's accounting, the licensee must submit a written exception thereto prior to the biennium deadline and include a copy of the providers course completion certificate.
- 8.2.4 The maximum number of carryover credits shall not exceed five (5) credits in a biennium reporting period. Carryover shall not apply to ethics credit requirements. Credits in excess of the mandatory requirements set forth in section 8.2.1 may be applied to the licensee's general course requirements
- 8.2.5 No continuing education requirement shall apply to newly licensed individuals during the biennium in which such individuals are licensed.
- 8.3 Automatic credit. An individual required to complete continuing education requirements as specified in section 8.2.1 that has been continuously licensed for twenty-five (25) years or longer prior to the start of a biennium reporting period or who holds a professional designation shall receive an automatic credit of twelve (12) credits in each biennium. An individual required to complete continuing education requirements as specified in section 8.2.2 that has been continuously licensed for twenty-five (25) years or longer prior to the start of a biennium reporting period or who holds a professional designation shall receive an automatic credit of six (6) credits in each biennium. The Department shall maintain a list of approved professional designations. Automatic credits may not be applied to satisfy (i) the mandatory continuing education courses set forth in section 8.2.1, or (ii) the required ethics credits set forth in section 8.2.2.

(Break in Continuity of Sections)

12.0 Effective Date

This Regulation shall become effective ten (10) days after being published as a final regulation.

***Please Note: As the rest of the sections were not amended they are not being published. A copy of the regulation is available at:**

504 Continuing Education for Insurance Agents, Brokers, Surplus Lines Brokers and Consultants

OFFICE OF THE COMMISSIONER

Statutory Authority: 18 Delaware Code, Sections 311 and 1113 (18 Del.C. §§311 & 1113)
18 DE Admin. Code 1208

PUBLIC NOTICE

1208 New Annuity Mortality Table for Use in Determining Reserve Liabilities for Annuities

INSURANCE COMMISSIONER KAREN WELDIN STEWART hereby gives notice of proposed amended Department of Insurance Regulation 1208 relating to New Annuity Mortality Table for Use in Determining Reserve Liabilities for Annuities. The docket number for this proposed AMENDED regulation is 2930-2015.

The proposed amended regulation changes the current valuation standards for individual annuity or pure endowment contracts by adopting the 2012 Individual Annuity Reserve Table (2012 IAR Table) to be used for the minimum reserve valuation for individual annuity or pure endowment contracts issued on or after January 1, 2015. These proposed amendments are consistent with the National Association of Insurance Commissioner's current Model regulation 821, which was amended in 2012. The Delaware Code authority for the change is 18 **Del.C.** §§311 and 1113, and 29 **Del.C.** Ch. 101.

The Department of Insurance does not plan to hold a public hearing on the proposed amended regulation. The proposed amended regulation appears below and can also be viewed at the Delaware Insurance Commissioner's website at:

www.delawareinsurance.gov/departments/documents/ProposedRegs/ProposedRegs.shtml

Any person can file written comments, suggestions, briefs, and compilations of data or other materials concerning the proposed amendment. Any written submission in response to this notice and relevant to the proposed regulation must be received by the Department of Insurance no later than 4:30 p.m. EST, Friday, October 30, 2015. Any such requests should be directed to:

Regulatory Specialist Rhonda West
Delaware Department of Insurance
841 Silver Lake Boulevard
Dover, DE 19904
Phone: (302) 674-7379
Fax: (302) 739-5566
Email: rhonda.west@state.de.us

1208 New Annuity Mortality Table for Use in Determining Reserve Liabilities for Annuities

1.0 Authority

This rule is promulgated by the Commissioner of Insurance pursuant to 18 **Del.C.** §1113 and 29 **Del.C.** Ch. 101 (Administrative Procedures Act).

2.0 Purpose

The purpose of this regulation is to recognize the following mortality tables; for use in determining the minimum standard of valuation for annuity and pure endowment contracts: the 1983 Table "a" and 1983 Group Annuity Mortality (GAM) Table, the Annuity 2000 Mortality Table, the 2012 Individual Annuity Reserving (2012 IAR) Table, and the Annuity 2000 Mortality Table and the 1994 Group Annuity Reserving (1994 GAR) Table ~~for use in determining the minimum standard of valuation for annuity and pure endowment contracts.~~

3.0 Definitions

3.1 As used in this regulation:

"1983 GAM Table" means that mortality table developed by the Society of Actuaries Committee on Annuities and adopted as a recognized mortality table for annuities in December 1983 by the National Association of Insurance Commissioners.

"1983 Table 'Aa'" means that mortality table developed by the Society of Actuaries Committee to Recommend a New Mortality Basis for Individual Annuity Valuation and adopted as a recognized mortality table for annuities in June 1982 by the National Association of Insurance Commissioners.

"1994 GAR Table" means that mortality table developed by the Society of Actuaries Group Annuity Valuation Table Task Force and adopted as a recognized mortality table in December 1996 by the National Association of Insurance Commissioners.

"2012 IAR Table" means that Generational mortality table developed by the Society of Actuaries Committee on Life Insurance Research and containing rates, $q_{x2012+n}$, derived from a combination of the 2012 IAM Period Table and Projection Scale G2, using the methodology stated in section 5.0.

"2012 Individual Annuity Mortality Period Life (2012 IAM Period) Table" means the Period table containing loaded mortality rates for calendar year 2012. This table contains rates, q_{x2012} , developed by the Society of Actuaries Committee on Life Insurance Research and is shown in Appendices 1-2.

"Annuity 2000 Mortality Table" means that mortality table developed by the Society of Actuaries Committee on Life Insurance Research and adopted as a recognized mortality table for annuities in December 1996 by the National Association of Insurance Commissioners.

"Generational mortality table" means a mortality table containing a set of mortality rates that decrease for a given age from one year to the next based on a combination of a Period table and a projection scale containing rates of mortality improvement.

"Period table" means a table of mortality rates applicable to a given calendar year (the Period).

"Projection Scale G2 (Scale G2)" is a table of annual rates, $G2_x$, of mortality improvement by age for projecting future mortality rates beyond calendar year 2012. This table was developed by the Society of Actuaries Committee on Life Insurance Research and is shown in Appendices 3-4.

4.0 Individual Annuity or Pure Endowment Contracts

- 4.1 Except as provided in Subsections 4.2 and 4.3 of this section, the 1983 Table "Aa" is recognized and approved as an individual annuity mortality table for valuation and, at the option of the company, may be used for purposes of determining the minimum standard for valuation for any individual annuity or pure endowment contract issued on or after July 8, 1980 and prior to January 1, 2001.
- 4.2 Except as provided in Subsection 4.3 of this section, either the 1983 Table "Aa" is to or the Annuity 2000 Mortality Table shall be used for determining the minimum standard valuation for any individual annuity or pure endowment contract issued on or after January 1, 1987 and prior to January 1, 2001.
- 4.3 Except as provided in Subsections 4.4 and 4.5 of this section, the Annuity 2000 Mortality Table shall be used for determining the minimum standard of valuation for any individual annuity or pure endowment contract issued on or after January 1, 2001.
- 4.4 Except as provided in Subsection 4.5 of this section, the 2012 IAR Mortality Table shall be used for determining the minimum standard of valuation for any individual annuity or pure endowment contract issued on or after January 1, 2015.
- 4.5 The 1983 Table "a" without projection is to be used for determining the minimum standards of valuation for an individual annuity or pure endowment contract issued on or after January 1, 2001, solely when the contract is based on life contingencies and is issued to fund periodic benefits arising from:
 - 4.45.1 Settlements of various forms of claims pertaining to court settlements or out of court settlements from tort actions;
 - 4.45.2 Settlements involving similar actions such as worker's compensation claims; or
 - 4.45.3 Settlements of long term disability claims where a temporary or life annuity has been used in lieu of continuing disability payments.

5.0 Application of the 2012 IAR Mortality Table

In using the 2012 IAR Mortality Table, the mortality rate for a person age x in year $(2012 + n)$ is calculated as follows:

$$q_x^{2012+n} = q_x^{2012}(1 - G2_x)^n$$

The resulting q_x^{2012+n} shall be rounded to three decimal places per 1,000, e.g., 0.741 deaths per 1,000. Also, the rounding shall occur according to the formula above, starting at the 2012 period table rate.

PROPOSED REGULATIONS

For example, for a male age 30, $q_x^{2012} = 0.741$.

$$q_x^{2013} = 0.741 * (1 - 0.010)^1 = 0.73359, \text{ which is rounded to } 0.734.$$

$$q_x^{2014} = 0.741 * (1 - 0.010)^2 = 0.7262541, \text{ which is rounded to } 0.726.$$

A method leading to incorrect rounding would be to calculate q_x^{2014} as $q_x^{2013} * (1 - 0.010)$, or $0.734 * 0.99 = 0.727$. It is incorrect to use the already rounded q_x^{2013} to calculate q_x^{2014} .

56.0 Group Annuity or Pure Endowment Contracts

- 56.1 Except as provided in Subsections 6.2 and 6.3 of this section, the 1-983 GAM Table, and the 1983 Table "a" and the 1994 GAR Table are recognized and approved as group annuity mortality tables for valuation and, at the option of the company, either any one of these tables may be used for purposes of valuation for any annuity or pure endowment purchased on or after July 8, 1980 and prior to January 1, 2004 under a group annuity or pure endowment contract.
- 56.2 Except as provided in Subsection 6.3 of this section, either the 1983 GAM Table or the 1994 GAR Table is to shall be used for determining the minimum standard of valuation for any annuity or pure endowment purchased on or after January 1, 1987 and prior to January 1, 2004 under a group annuity or pure endowment contract.
- 56.3 The 1994 GAR Table shall be used for determining the minimum standard of valuation for any annuity or pure endowment purchased on or after January 1, 2001 under a group annuity or pure endowment contract.

67.0 Application of the 1994 GAR Table

In using the 1994 GAR Table, the mortality rate for a person age x in year $(1994 + n)$ is calculated as follows:

$$q_x^{1994+n} = q_x^{1994} (1 - AA_x)^n$$

where the q_x^{1994} and AA_x s are as specified in the 1994 GAR Table.

78.0 Separability

If any provision of this Regulation or the application thereof to any person or circumstances is for any reason held to be invalid, the remainder of the regulation and the application of such provision to other persons or circumstances shall not be affected thereby.

89.0 Effective Date

The effective date of this Regulation is July 11, 2010. This Regulation shall become effective ten (10) days after being published as a final regulation and shall be used for the minimum reserve valuation for individual annuity and pure endowment contracts issued on or after January 1, 2015.

APPENDIX 1

**2012 IAM Period Table
Female, Age Nearest Birthday**

AGE	<u>$1000 \cdot q_x^{2012}$</u>						
0	1.621	30	0.300	60	3.460	90	88.377
1	0.405	31	0.321	61	3.916	91	97.491
2	0.259	32	0.338	62	4.409	92	107.269
3	0.179	33	0.351	63	4.933	93	118.201
4	0.137	34	0.365	64	5.507	94	130.969

PROPOSED REGULATIONS

<u>5</u>	<u>0.125</u>	<u>35</u>	<u>0.381</u>	<u>65</u>	<u>6.146</u>	<u>95</u>	<u>146.449</u>
<u>6</u>	<u>0.117</u>	<u>36</u>	<u>0.402</u>	<u>66</u>	<u>6.551</u>	<u>96</u>	<u>163.908</u>
<u>7</u>	<u>0.110</u>	<u>37</u>	<u>0.429</u>	<u>67</u>	<u>7.039</u>	<u>97</u>	<u>179.695</u>
<u>8</u>	<u>0.095</u>	<u>38</u>	<u>0.463</u>	<u>68</u>	<u>7.628</u>	<u>98</u>	<u>196.151</u>
<u>9</u>	<u>0.088</u>	<u>39</u>	<u>0.504</u>	<u>69</u>	<u>8.311</u>	<u>99</u>	<u>213.150</u>
<u>10</u>	<u>0.085</u>	<u>40</u>	<u>0.552</u>	<u>70</u>	<u>9.074</u>	<u>100</u>	<u>230.722</u>
<u>11</u>	<u>0.086</u>	<u>41</u>	<u>0.600</u>	<u>71</u>	<u>9.910</u>	<u>101</u>	<u>251.505</u>
<u>12</u>	<u>0.094</u>	<u>42</u>	<u>0.650</u>	<u>72</u>	<u>10.827</u>	<u>102</u>	<u>273.007</u>
<u>13</u>	<u>0.108</u>	<u>43</u>	<u>0.697</u>	<u>73</u>	<u>11.839</u>	<u>103</u>	<u>295.086</u>
<u>14</u>	<u>0.131</u>	<u>44</u>	<u>0.740</u>	<u>74</u>	<u>12.974</u>	<u>104</u>	<u>317.591</u>
<u>15</u>	<u>0.156</u>	<u>45</u>	<u>0.780</u>	<u>75</u>	<u>14.282</u>	<u>105</u>	<u>340.362</u>
<u>16</u>	<u>0.179</u>	<u>46</u>	<u>0.825</u>	<u>76</u>	<u>15.799</u>	<u>106</u>	<u>362.371</u>
<u>17</u>	<u>0.198</u>	<u>47</u>	<u>0.885</u>	<u>77</u>	<u>17.550</u>	<u>107</u>	<u>384.113</u>
<u>18</u>	<u>0.211</u>	<u>48</u>	<u>0.964</u>	<u>78</u>	<u>19.582</u>	<u>108</u>	<u>400.000</u>
<u>19</u>	<u>0.221</u>	<u>49</u>	<u>1.051</u>	<u>79</u>	<u>21.970</u>	<u>109</u>	<u>400.000</u>
<u>20</u>	<u>0.228</u>	<u>50</u>	<u>1.161</u>	<u>80</u>	<u>24.821</u>	<u>110</u>	<u>400.000</u>
<u>21</u>	<u>0.234</u>	<u>51</u>	<u>1.308</u>	<u>81</u>	<u>28.351</u>	<u>111</u>	<u>400.000</u>
<u>22</u>	<u>0.240</u>	<u>52</u>	<u>1.460</u>	<u>82</u>	<u>32.509</u>	<u>112</u>	<u>400.000</u>
<u>23</u>	<u>0.245</u>	<u>53</u>	<u>1.613</u>	<u>83</u>	<u>37.329</u>	<u>113</u>	<u>400.000</u>
<u>24</u>	<u>0.247</u>	<u>54</u>	<u>1.774</u>	<u>84</u>	<u>42.830</u>	<u>114</u>	<u>400.000</u>
<u>25</u>	<u>0.250</u>	<u>55</u>	<u>1.950</u>	<u>85</u>	<u>48.997</u>	<u>115</u>	<u>400.000</u>
<u>26</u>	<u>0.256</u>	<u>56</u>	<u>2.154</u>	<u>86</u>	<u>55.774</u>	<u>116</u>	<u>400.000</u>
<u>27</u>	<u>0.261</u>	<u>57</u>	<u>2.399</u>	<u>87</u>	<u>63.140</u>	<u>117</u>	<u>400.000</u>
<u>28</u>	<u>0.270</u>	<u>58</u>	<u>2.700</u>	<u>88</u>	<u>71.066</u>	<u>118</u>	<u>400.000</u>
<u>29</u>	<u>0.281</u>	<u>59</u>	<u>3.054</u>	<u>89</u>	<u>79.502</u>	<u>119</u>	<u>400.000</u>
						<u>120</u>	<u>1000.000</u>

APPENDIX 2

2012 IAM Period Table Male, Age Nearest Birthday

<u>AGE</u>	<u>$1000 \cdot q_x^{2012}$</u>						
<u>0</u>	<u>1.605</u>	<u>30</u>	<u>0.741</u>	<u>60</u>	<u>5.096</u>	<u>90</u>	<u>109.993</u>
<u>1</u>	<u>0.401</u>	<u>31</u>	<u>0.751</u>	<u>61</u>	<u>5.614</u>	<u>91</u>	<u>123.119</u>
<u>2</u>	<u>0.275</u>	<u>32</u>	<u>0.754</u>	<u>62</u>	<u>6.169</u>	<u>92</u>	<u>137.168</u>
<u>3</u>	<u>0.229</u>	<u>33</u>	<u>0.756</u>	<u>63</u>	<u>6.759</u>	<u>93</u>	<u>152.171</u>
<u>4</u>	<u>0.174</u>	<u>34</u>	<u>0.756</u>	<u>64</u>	<u>7.398</u>	<u>94</u>	<u>168.194</u>
<u>5</u>	<u>0.168</u>	<u>35</u>	<u>0.756</u>	<u>65</u>	<u>8.106</u>	<u>95</u>	<u>185.260</u>
<u>6</u>	<u>0.165</u>	<u>36</u>	<u>0.756</u>	<u>66</u>	<u>8.548</u>	<u>96</u>	<u>197.322</u>
<u>7</u>	<u>0.159</u>	<u>37</u>	<u>0.756</u>	<u>67</u>	<u>9.076</u>	<u>97</u>	<u>214.751</u>
<u>8</u>	<u>0.143</u>	<u>38</u>	<u>0.756</u>	<u>68</u>	<u>9.708</u>	<u>98</u>	<u>232.507</u>
<u>9</u>	<u>0.129</u>	<u>39</u>	<u>0.800</u>	<u>69</u>	<u>10.463</u>	<u>99</u>	<u>250.397</u>
<u>10</u>	<u>0.113</u>	<u>40</u>	<u>0.859</u>	<u>70</u>	<u>11.357</u>	<u>100</u>	<u>268.607</u>
<u>11</u>	<u>0.111</u>	<u>41</u>	<u>0.926</u>	<u>71</u>	<u>12.418</u>	<u>101</u>	<u>290.016</u>
<u>12</u>	<u>0.132</u>	<u>42</u>	<u>0.999</u>	<u>72</u>	<u>13.675</u>	<u>102</u>	<u>311.849</u>
<u>13</u>	<u>0.169</u>	<u>43</u>	<u>1.069</u>	<u>73</u>	<u>15.150</u>	<u>103</u>	<u>333.962</u>
<u>14</u>	<u>0.213</u>	<u>44</u>	<u>1.142</u>	<u>74</u>	<u>16.860</u>	<u>104</u>	<u>356.207</u>

PROPOSED REGULATIONS

<u>15</u>	<u>0.254</u>	<u>45</u>	<u>1.219</u>	<u>75</u>	<u>18.815</u>	<u>105</u>	<u>380.000</u>
<u>16</u>	<u>0.293</u>	<u>46</u>	<u>1.318</u>	<u>76</u>	<u>21.031</u>	<u>106</u>	<u>400.000</u>
<u>17</u>	<u>0.328</u>	<u>47</u>	<u>1.454</u>	<u>77</u>	<u>23.540</u>	<u>107</u>	<u>400.000</u>
<u>18</u>	<u>0.359</u>	<u>48</u>	<u>1.627</u>	<u>78</u>	<u>26.375</u>	<u>108</u>	<u>400.000</u>
<u>19</u>	<u>0.387</u>	<u>49</u>	<u>1.829</u>	<u>79</u>	<u>29.572</u>	<u>109</u>	<u>400.000</u>
<u>20</u>	<u>0.414</u>	<u>50</u>	<u>2.057</u>	<u>80</u>	<u>33.234</u>	<u>110</u>	<u>400.000</u>
<u>21</u>	<u>0.443</u>	<u>51</u>	<u>2.302</u>	<u>81</u>	<u>37.533</u>	<u>111</u>	<u>400.000</u>
<u>22</u>	<u>0.473</u>	<u>52</u>	<u>2.545</u>	<u>82</u>	<u>42.261</u>	<u>112</u>	<u>400.000</u>
<u>23</u>	<u>0.513</u>	<u>53</u>	<u>2.779</u>	<u>83</u>	<u>47.441</u>	<u>113</u>	<u>400.000</u>
<u>24</u>	<u>0.554</u>	<u>54</u>	<u>3.011</u>	<u>84</u>	<u>53.233</u>	<u>114</u>	<u>400.000</u>
<u>25</u>	<u>0.602</u>	<u>55</u>	<u>3.254</u>	<u>85</u>	<u>59.855</u>	<u>115</u>	<u>400.000</u>
<u>26</u>	<u>0.655</u>	<u>56</u>	<u>3.529</u>	<u>86</u>	<u>67.514</u>	<u>116</u>	<u>400.000</u>
<u>27</u>	<u>0.688</u>	<u>57</u>	<u>3.845</u>	<u>87</u>	<u>76.340</u>	<u>117</u>	<u>400.000</u>
<u>28</u>	<u>0.710</u>	<u>58</u>	<u>4.213</u>	<u>88</u>	<u>86.388</u>	<u>118</u>	<u>400.000</u>
<u>29</u>	<u>0.727</u>	<u>59</u>	<u>4.631</u>	<u>89</u>	<u>97.634</u>	<u>119</u>	<u>400.000</u>
						<u>120</u>	<u>1000.000</u>

APPENDIX 3

Projection Scale G2 Female, Age Nearest Birthday

<u>AGE</u>	<u>G2_x</u>	<u>AGE</u>	<u>G2_x</u>	<u>AGE</u>	<u>G2_x</u>	<u>AGE</u>	<u>G2_x</u>
<u>0</u>	<u>0.010</u>	<u>30</u>	<u>0.010</u>	<u>60</u>	<u>0.013</u>	<u>90</u>	<u>0.006</u>
<u>1</u>	<u>0.010</u>	<u>31</u>	<u>0.010</u>	<u>61</u>	<u>0.013</u>	<u>91</u>	<u>0.006</u>
<u>2</u>	<u>0.010</u>	<u>32</u>	<u>0.010</u>	<u>62</u>	<u>0.013</u>	<u>92</u>	<u>0.005</u>
<u>3</u>	<u>0.010</u>	<u>33</u>	<u>0.010</u>	<u>63</u>	<u>0.013</u>	<u>93</u>	<u>0.005</u>
<u>4</u>	<u>0.010</u>	<u>34</u>	<u>0.010</u>	<u>64</u>	<u>0.013</u>	<u>94</u>	<u>0.004</u>
<u>5</u>	<u>0.010</u>	<u>35</u>	<u>0.010</u>	<u>65</u>	<u>0.013</u>	<u>95</u>	<u>0.004</u>
<u>6</u>	<u>0.010</u>	<u>36</u>	<u>0.010</u>	<u>66</u>	<u>0.013</u>	<u>96</u>	<u>0.004</u>
<u>7</u>	<u>0.010</u>	<u>37</u>	<u>0.010</u>	<u>67</u>	<u>0.013</u>	<u>97</u>	<u>0.003</u>
<u>8</u>	<u>0.010</u>	<u>38</u>	<u>0.010</u>	<u>68</u>	<u>0.013</u>	<u>98</u>	<u>0.003</u>
<u>9</u>	<u>0.010</u>	<u>39</u>	<u>0.010</u>	<u>69</u>	<u>0.013</u>	<u>99</u>	<u>0.002</u>
<u>10</u>	<u>0.010</u>	<u>40</u>	<u>0.010</u>	<u>70</u>	<u>0.013</u>	<u>100</u>	<u>0.002</u>
<u>11</u>	<u>0.010</u>	<u>41</u>	<u>0.010</u>	<u>71</u>	<u>0.013</u>	<u>101</u>	<u>0.002</u>
<u>12</u>	<u>0.010</u>	<u>42</u>	<u>0.010</u>	<u>72</u>	<u>0.013</u>	<u>102</u>	<u>0.001</u>
<u>13</u>	<u>0.010</u>	<u>43</u>	<u>0.010</u>	<u>73</u>	<u>0.013</u>	<u>103</u>	<u>0.001</u>
<u>14</u>	<u>0.010</u>	<u>44</u>	<u>0.010</u>	<u>74</u>	<u>0.013</u>	<u>104</u>	<u>0.000</u>
<u>15</u>	<u>0.010</u>	<u>45</u>	<u>0.010</u>	<u>75</u>	<u>0.013</u>	<u>105</u>	<u>0.000</u>
<u>16</u>	<u>0.010</u>	<u>46</u>	<u>0.010</u>	<u>76</u>	<u>0.013</u>	<u>106</u>	<u>0.000</u>
<u>17</u>	<u>0.010</u>	<u>47</u>	<u>0.010</u>	<u>77</u>	<u>0.013</u>	<u>107</u>	<u>0.000</u>
<u>18</u>	<u>0.010</u>	<u>48</u>	<u>0.010</u>	<u>78</u>	<u>0.013</u>	<u>108</u>	<u>0.000</u>
<u>19</u>	<u>0.010</u>	<u>49</u>	<u>0.010</u>	<u>79</u>	<u>0.013</u>	<u>109</u>	<u>0.000</u>
<u>20</u>	<u>0.010</u>	<u>50</u>	<u>0.010</u>	<u>80</u>	<u>0.013</u>	<u>110</u>	<u>0.000</u>
<u>21</u>	<u>0.010</u>	<u>51</u>	<u>0.010</u>	<u>81</u>	<u>0.012</u>	<u>111</u>	<u>0.000</u>
<u>22</u>	<u>0.010</u>	<u>52</u>	<u>0.011</u>	<u>82</u>	<u>0.012</u>	<u>112</u>	<u>0.000</u>
<u>23</u>	<u>0.010</u>	<u>53</u>	<u>0.011</u>	<u>83</u>	<u>0.011</u>	<u>113</u>	<u>0.000</u>
<u>24</u>	<u>0.010</u>	<u>54</u>	<u>0.011</u>	<u>84</u>	<u>0.010</u>	<u>114</u>	<u>0.000</u>
<u>25</u>	<u>0.010</u>	<u>55</u>	<u>0.012</u>	<u>85</u>	<u>0.010</u>	<u>115</u>	<u>0.000</u>
<u>26</u>	<u>0.010</u>	<u>56</u>	<u>0.012</u>	<u>86</u>	<u>0.009</u>	<u>116</u>	<u>0.000</u>
<u>27</u>	<u>0.010</u>	<u>57</u>	<u>0.012</u>	<u>87</u>	<u>0.008</u>	<u>117</u>	<u>0.000</u>
<u>28</u>	<u>0.010</u>	<u>58</u>	<u>0.012</u>	<u>88</u>	<u>0.007</u>	<u>118</u>	<u>0.000</u>

PROPOSED REGULATIONS

<u>29</u>	<u>0.010</u>	<u>59</u>	<u>0.013</u>	<u>89</u>	<u>0.007</u>	<u>119</u>	<u>0.000</u>
						<u>120</u>	<u>0.000</u>

APPENDIX 4

Projection Scale G2 Male, Age Nearest Birthday

<u>AGE</u>	<u>G2_x</u>	<u>AGE</u>	<u>G2_x</u>	<u>AGE</u>	<u>G2_x</u>	<u>AGE</u>	<u>G2_x</u>
<u>0</u>	<u>0.010</u>	<u>30</u>	<u>0.010</u>	<u>60</u>	<u>0.015</u>	<u>90</u>	<u>0.007</u>
<u>1</u>	<u>0.010</u>	<u>31</u>	<u>0.010</u>	<u>61</u>	<u>0.015</u>	<u>91</u>	<u>0.007</u>
<u>2</u>	<u>0.010</u>	<u>32</u>	<u>0.010</u>	<u>62</u>	<u>0.015</u>	<u>92</u>	<u>0.006</u>
<u>3</u>	<u>0.010</u>	<u>33</u>	<u>0.010</u>	<u>63</u>	<u>0.015</u>	<u>93</u>	<u>0.005</u>
<u>4</u>	<u>0.010</u>	<u>34</u>	<u>0.010</u>	<u>64</u>	<u>0.015</u>	<u>94</u>	<u>0.005</u>
<u>5</u>	<u>0.010</u>	<u>35</u>	<u>0.010</u>	<u>65</u>	<u>0.015</u>	<u>95</u>	<u>0.004</u>
<u>6</u>	<u>0.010</u>	<u>36</u>	<u>0.010</u>	<u>66</u>	<u>0.015</u>	<u>96</u>	<u>0.004</u>
<u>7</u>	<u>0.010</u>	<u>37</u>	<u>0.010</u>	<u>67</u>	<u>0.015</u>	<u>97</u>	<u>0.003</u>
<u>8</u>	<u>0.010</u>	<u>38</u>	<u>0.010</u>	<u>68</u>	<u>0.015</u>	<u>98</u>	<u>0.003</u>
<u>9</u>	<u>0.010</u>	<u>39</u>	<u>0.010</u>	<u>69</u>	<u>0.015</u>	<u>99</u>	<u>0.002</u>
<u>10</u>	<u>0.010</u>	<u>40</u>	<u>0.010</u>	<u>70</u>	<u>0.015</u>	<u>100</u>	<u>0.002</u>
<u>11</u>	<u>0.010</u>	<u>41</u>	<u>0.010</u>	<u>71</u>	<u>0.015</u>	<u>101</u>	<u>0.002</u>
<u>12</u>	<u>0.010</u>	<u>42</u>	<u>0.010</u>	<u>72</u>	<u>0.015</u>	<u>102</u>	<u>0.001</u>
<u>13</u>	<u>0.010</u>	<u>43</u>	<u>0.010</u>	<u>73</u>	<u>0.015</u>	<u>103</u>	<u>0.001</u>
<u>14</u>	<u>0.010</u>	<u>44</u>	<u>0.010</u>	<u>74</u>	<u>0.015</u>	<u>104</u>	<u>0.000</u>
<u>15</u>	<u>0.010</u>	<u>45</u>	<u>0.010</u>	<u>75</u>	<u>0.015</u>	<u>105</u>	<u>0.000</u>
<u>16</u>	<u>0.010</u>	<u>46</u>	<u>0.010</u>	<u>76</u>	<u>0.015</u>	<u>106</u>	<u>0.000</u>
<u>17</u>	<u>0.010</u>	<u>47</u>	<u>0.010</u>	<u>77</u>	<u>0.015</u>	<u>107</u>	<u>0.000</u>
<u>18</u>	<u>0.010</u>	<u>48</u>	<u>0.010</u>	<u>78</u>	<u>0.015</u>	<u>108</u>	<u>0.000</u>
<u>19</u>	<u>0.010</u>	<u>49</u>	<u>0.010</u>	<u>79</u>	<u>0.015</u>	<u>109</u>	<u>0.000</u>
<u>20</u>	<u>0.010</u>	<u>50</u>	<u>0.010</u>	<u>80</u>	<u>0.015</u>	<u>110</u>	<u>0.000</u>
<u>21</u>	<u>0.010</u>	<u>51</u>	<u>0.011</u>	<u>81</u>	<u>0.014</u>	<u>111</u>	<u>0.000</u>
<u>22</u>	<u>0.010</u>	<u>52</u>	<u>0.011</u>	<u>82</u>	<u>0.013</u>	<u>112</u>	<u>0.000</u>
<u>23</u>	<u>0.010</u>	<u>53</u>	<u>0.012</u>	<u>83</u>	<u>0.013</u>	<u>113</u>	<u>0.000</u>
<u>24</u>	<u>0.010</u>	<u>54</u>	<u>0.012</u>	<u>84</u>	<u>0.012</u>	<u>114</u>	<u>0.000</u>
<u>25</u>	<u>0.010</u>	<u>55</u>	<u>0.013</u>	<u>85</u>	<u>0.011</u>	<u>115</u>	<u>0.000</u>
<u>26</u>	<u>0.010</u>	<u>56</u>	<u>0.013</u>	<u>86</u>	<u>0.010</u>	<u>116</u>	<u>0.000</u>
<u>27</u>	<u>0.010</u>	<u>57</u>	<u>0.014</u>	<u>87</u>	<u>0.009</u>	<u>117</u>	<u>0.000</u>
<u>28</u>	<u>0.010</u>	<u>58</u>	<u>0.014</u>	<u>88</u>	<u>0.009</u>	<u>118</u>	<u>0.000</u>
<u>29</u>	<u>0.010</u>	<u>59</u>	<u>0.015</u>	<u>89</u>	<u>0.008</u>	<u>119</u>	<u>0.000</u>
						<u>120</u>	<u>0.000</u>

PROPOSED REGULATIONS

DEPARTMENT OF NATURAL RESOURCES AND ENVIRONMENTAL CONTROL**DIVISION OF ENERGY AND CLIMATE**Statutory Authority: 26 Delaware Code, Section 354(i) and (j) (26 **Del.C.** §354(i) & (j))**REGISTER NOTICE #2012-03****102 Implementation of Renewable Energy Portfolio Standards Cost Cap Provisions****1. TITLE OF THE REGULATION:**

102 Implementation of Renewable Energy Portfolio Standards Cost Cap Provisions

2. BRIEF SYNOPSIS OF THE SUBJECT, SUBSTANCE AND ISSUE:

The purpose of this action is to propose rules to govern how the Director of the Division of Energy & Climate (Director) and the Division of Energy & Climate (Division) administer their obligations under 26 **Del.C.** §354(i) & (j). The statute directs when and whether the Director may institute a freeze on the implementation of Delaware's Renewable Energy Portfolio Standards as provided for in 26 **Del.C.** §354(a).

Start Action Notice 2012-03 initiating this rule making process was issued April 16, 2012.

3. POSSIBLE TERMS OF THE AGENCY ACTION:

None.

4. STATUTORY BASIS OR LEGAL AUTHORITY TO ACT:26 **Del.C.** §354(i) & (j)**5. LIST OF OTHER REGULATIONS THAT MAY BE IMPACTED OR AFFECTED BY THE PROPOSAL:**

N/A

6. NOTICE OF PUBLIC COMMENT:

The hearing record on 102 Implementation of Renewable Energy Portfolio Standards Cost Cap Provisions (Proposed Rules to Implement 26 **Del.C.** §354(i) & (j)) will open October 1, 2015 and will close November 18, 2015 at 4:30 PM.

Individuals may submit written comments regarding the proposed changes via e-mail to Lisa.Vest@state.de.us or via the USPS to Lisa Vest, Hearing Officer, DNREC, 89 Kings Highway, Dover, DE 19901 (302) 739-9042. A public hearing on the proposed amendment will be held on November 3, 2015 beginning at 6:00 p.m. in the DNREC Auditorium, 89 Kings Highway, Dover, DE 19901.

7. PREPARED BY:

Thomas Noyes Thomas.Noyes@state.de.us (302) 735-3356

Philip Cherry, Director

102 Implementation of Renewable Energy Portfolio Standards Cost Cap Provisions**1.0 Purpose**

These rules govern how the Director of the Division of Energy & Climate (Director) and the Division of Energy & Climate (Division) administer their obligations under 26 **Del.C.** §354(i) & (j). The statute directs when and whether the Director may institute a freeze on the implementation of the Renewable Energy Portfolio Standards as provided for in 26 **Del.C.** §354(a).

2.0 Definitions

For purposes of this regulation, the following words and phrases shall have the following meaning unless the context clearly indicates otherwise:

"Alternative compliance payment" means a payment of a certain dollar amount per megawatt hour, which a Commission-Regulated Electric Company may submit in lieu of supplying the minimum percentage of RECs from Eligible Energy Resources required as defined and set by 26 **Del.C.** §§352(1) and 358(d).

"Avoided system costs" means reductions in electric generation, transmission or distribution costs.

"Commission-Regulated Electric Company" means the same as an Electric Distribution Company in 26 **Del.C.** §1001(12).

"Compliance year" means the calendar year beginning with June 1 and ending with May 31 of the following year, for which a Commission-Regulated Electric Company must demonstrate that it has met the requirements of the subchapter known as the "Renewable Energy Portfolio Standards Act".

"Director" means the Director of the Division of Energy & Climate, who is considered the State Energy Coordinator for the purpose of these rules.

"Division" means the Division of Energy & Climate, the successor agency to the Delaware Energy Office.

"End-use customer" means a person or entity in Delaware that purchases electrical energy at retail prices from regulated electric utilities.

"Exempt sales" means the retail customer sales of a Commission-Regulated Electric Company that is not included in the total retail sales for RPS compliance.

"Externality benefits" means reductions in environmental, health and mortality costs resulting from reduced emissions.

"Freeze" means suspension of enforcement or implementation of the annual increase in the RPS as provided for under 26 **Del.C.** §§352(3) & 354(a).

"Green Energy Fund" means the grant program authorized under 29 **Del.C.** §8057.

"Integrated Resource Plan" or **"IRP"** means the plan filed by the Commission-Regulated Electric Company to meet the requirements of 26 **Del.C.** §1007(c) & (d).

"Non-exempt sales" means the retail customer sales of a Commission-Regulated Electric Company that is included in the total retail sales for RPS compliance.

"PJM" or **"PJM interconnection"** means the regional transmission organization that coordinates the movement of wholesale electricity in the PJM region, or its successors at law.

"Price suppression effects" means reductions in energy costs due to competitive pressures from renewable resources.

"PSC" means the Delaware Public Service Commission.

"REC costs of compliance" means the total costs expended by the Commission-Regulated Electric Company to achieve the applicable RPS percentage standards for RECs during a respective compliance year.

"REC offset hours" and **"SREC offset hours"** mean the MWh of output from a QFCPP that is utilized under 26 **Del.C.** §353(d) to offset the number of RECs and/or SRECs that might otherwise be required to be retired to meet REC and/or SREC percentage requirements in a compliance year.

"REC percentage requirements" and **"SREC percentage requirements"** mean the renewable energy portfolio requirements for each compliance year as set forth in 26 **Del.C.** §354(a).

"Renewable Energy Cost of Compliance" means the total costs expended by the Commission-Regulated Electric Company to achieve the applicable RPS percentage standards for all renewable energy during a respective compliance year.

"Renewable Energy Credit" or **"REC"** means a tradable instrument defined by 26 **Del.C.** §352(18) used to demonstrate compliance with the percentage requirements set forth in 26 **Del.C.** §354(a).

"RPS" means the renewable portfolio standard, the minimum percentage of total electricity sales delivered to Delaware end-use customers that is derived from eligible energy resources established under 26 **Del.C.** §354.

PROPOSED REGULATIONS

“Solar alternative compliance payment” means the payment of certain dollar amounts expended in lieu of supplying the minimum percentage from solar photovoltaics as defined and set by 26 **Del.C.** §§352(24) and 358(e).

“Solar Renewable Energy Cost of Compliance” means the total costs expended by a Commission-Regulated Electric Company to achieve the applicable RPS percentage standards for solar photovoltaic renewable energy during a respective compliance year.

“Solar Renewable Energy Credit” or **“SREC”** means the tradable instrument defined by 26 **Del.C.** §352(25) used to demonstrate compliance with the percentage requirements set forth in 26 **Del.C.** §354(a).

“Surcharge payments” means the dollar amounts (whether positive or negative) paid to, or received by, customers of a Commission-Regulated Electric Company from a QFCPP and a Commission-Regulated Electric Company under 26 **Del.C.** §364(d)(1) and an implementing tariff approved by the PSC.

“Third party supplier” means an electricity supplier that sells power to end-use customers delivered over the distribution facilities of the Commission-Regulated Electric Company. It does not include the Commission-Regulated Electric Company, Rural Electric Cooperatives or Municipal Electric Companies.

“Total Retail Costs of Electricity” means the total costs paid by customers of the Commission-Regulated Electric Company for the supply, transmission, distribution and delivery of retail electricity to serve non-exempt customers, including those served by third party suppliers, during a respective compliance year.

3.0 Application

- 3.1 These rules shall apply only to a Commission-Regulated Electric Company. These rules shall not apply to electric supply provided by either:
- 3.1.1 an exempted municipal electric company or a municipal utility (as set forth in 26 **Del.C.** §363); or
 - 3.1.2 an exempted rural electric cooperative or a rural electric cooperative (as set forth in 26 **Del.C.** §363).
- 3.2 These rules will be applied immediately upon enactment.

4.0 Calculation of the Cost of Compliance

- 4.1 The Division shall calculate the Renewable Energy Cost of Compliance, the Solar Renewable Energy Cost of Compliance and the Total Retail Cost of Electricity as follows.
- 4.2 The Division shall calculate the Renewable Energy Cost of Compliance for a particular compliance year to be:
- 4.2.1 the total of contributions to that portion of the Green Energy Fund used to support the development of renewable resources, plus
 - 4.2.2 the cost of RECs and SRECs retired to satisfy the RPS requirement, plus
 - 4.2.3 all Alternative Compliance Payments.
- 4.3 The Division shall calculate the Solar Renewable Energy Cost of Compliance for a particular compliance year to be:
- 4.3.1 the total of contributions to that portion of the Green Energy Fund used to support the development of photovoltaic renewable resources, plus
 - 4.3.2 the cost of SRECs retired to satisfy the RPS requirement, plus
 - 4.3.3 all Solar Alternative Compliance Payments for the solar photovoltaic requirement.
- 4.4 The Division will determine the Total Retail Costs of Electricity as all customer costs for non-exempt load customers for a particular compliance year.

5.0 Determination by the Director

- 5.1 The Director shall review the calculations of the Division.
- 5.2 If the Division calculations show that the increase in the Renewable Energy Cost of Compliance over the previous compliance year is equal to or greater than 3 percent of the Total Retail Cost of Electricity, the Director shall, after consulting with the staff of the PSC, determine whether a freeze should be implemented.
- 5.3 If the Division calculations show that the increase in the Solar Renewable Energy Cost of Compliance over the previous compliance year is equal to or greater than 1 percent of the Total Retail Cost of Electricity, the Director shall, after consulting with the staff of the PSC, determine whether a freeze should be implemented.
- 5.4 In making a determination, the Director may consider:
 - 5.4.1 the overall energy market conditions;
 - 5.4.2 the avoided cost benefits from the RPS;
 - 5.4.3 the externality benefits due to the RPS; and
 - 5.4.4 the economic impacts of the deployment of renewable energy in Delaware.
- 5.5 Overall market conditions may include shifts in energy prices, long term market trends, adjustments for short term fluctuations, changes in compliance costs, consumer benefits of other state energy policies such as the implementation of energy efficiency programs, and the overall cost of energy to consumers.
- 5.6 Avoided cost benefits from the RPS may include avoided system costs and price suppression effects attributable to the deployment of renewable energy that result in lower net electricity costs.
- 5.7 Externality benefits of changes in energy markets may include externality savings in health and mortality costs and environmental impacts due to policies promoting cleaner energy in Delaware and regional energy generation. To the extent possible, the externality savings should be consistent with the current IRP filed by the Commission-Regulated Electric Company, except where other published methods or studies are determined to be more appropriate.
- 5.8 Economic development benefits may include the overall economic activity attributed to jobs created by the development of renewable energy in Delaware.

6.0 Implementation

If the Director determines that a freeze should be implemented under Section 5.0 above, the Director, in consultation with the staff of the PSC, will declare the freeze and notify the Commission-Regulated Electric Company that filed reports on RPS compliance. The Director will also publish notice of the freeze in the next appropriate issue of the Delaware Register of Regulations.

7.0 Lifting of a Freeze

- 7.1 If a freeze has been imposed, the Division will calculate compliance costs, using the methods described in Section 4.0 of this regulation.
- 7.2 The Director will review the calculation and determine whether to lift a freeze using the methods and criteria described in Section 5.0 of this regulation.
- 7.3 If the total cost of compliance falls below the 3 percent threshold in Section 5.2 of this regulation or 1 percent threshold in Section 5.3 of this regulation, the Director shall lift a freeze following consultation with the staff of the PSC.
- 7.4 If a freeze is lifted, the Director will promptly notify, electronically and by mail, the Commission-Regulated Electric Company that filed reports on RPS compliance. The Director will also:
 - 7.4.1 provide prior notice of the lifting of the freeze to the PSC; and
 - 7.4.2 publish notice of the lifting of the freeze in the next appropriate issue of the Delaware Register of Regulations.

PROPOSED REGULATIONS

8.0 Administration

- 8.1 Within 90 days after the end of any compliance year, the Commission-Regulated Electric Company shall submit to the Division in writing and electronically the following information for the applicable compliance year:
- 8.1.1 the Renewable Energy Cost of Compliance for that compliance year;
 - 8.1.2 the Solar Renewable Energy Cost of Compliance costs for that compliance year;
 - 8.1.3 the Total Retail Costs of Electricity for that compliance year.
 - 8.1.4 the total MWh of output (either actual or deemed) produced by a QFCPP during the compliance year;
 - 8.1.5 the total amount of surcharge payments paid by the Commission-Regulated Electric Company customers during the compliance year;
 - 8.1.6 the calculation of the average QFCPP offset cost for the compliance year under Section 7.0 of this regulation; and
 - 8.1.7 the number of QFCPP output hours that the Commission-Regulated Electric Company would allocate to SREC and REC offset hours for the compliance year.
- 8.2 Within 30 days from receipt of the information described in Section 8.1 of this regulation from the Commission-Regulated Electric Company, the Division shall calculate the cost of compliance as described in Section 4.0 of this regulation and present the results to the Director.
- 8.3 Within 30 days of receipt of the calculations of the cost of compliance from the Division, the Director will, after receipt of the calculations, make a determination as described in Section 5.0 of this regulation and present to the Registrar for publication.
- 8.4 The public will have 15 days from the publication of the Director's determination to offer comment. The Director may alter or amend the determination based on review of the public comments.
- 8.5 The Director shall make a final determination, including effective date, and provide public notice and notify electronically and by mail the PSC, the Commission-Regulated Electric Company, and other interested parties within 15 business days of the close of public comments.

9.0 Existing Contracts

In implementing a freeze under these rules, existing contracts for the production or delivery of RECs, SRECs, renewable energy supply or other environmental attributes shall not be abrogated.

DIVISION OF WATERSHED STEWARDSHIP

SHORELINE AND WATERWAY MANAGEMENT SECTION

Statutory Authority: 7 Delaware Code, Section 6803(c) (7 Del.C. §6803(c))
7 DE Admin. Code 5102

PUBLIC NOTICE

SAN # 2014-05

1. TITLE OF THE REGULATIONS:

7 DE Admin. Code 5102 Regulation Governing Beach Protection and the Use of Beaches

2. BRIEF SYNOPSIS OF THE SUBJECT, SUBSTANCE AND ISSUES:

The purpose of revising the regulation is to incorporate legislative changes to the Beach Preservation Act (Del. Code Title 7, Chapter 68), to incorporate Division policies and construction standards that will result in less damages to structures and protections of the dune and beach resource. The revisions will also harmonize various provisions of the regulations.

3. POSSIBLE TERMS OF THE AGENCY ACTION:

None

4. STATUTORY BASIS OR LEGAL AUTHORITY TO ACT:

7 Del.C. §6803(c)

5. OTHER REGULATIONS THAT MAY BE AFFECTED BY THE PROPOSAL:

None

6. NOTICE OF PUBLIC COMMENT:

The hearing record on the proposed changes to 7 DE Admin. Code 5102 Regulations Governing Beach Protection and the Use of Beaches will be open October 1, 2015. Individuals may submit written comments regarding the proposed changes via e-mail to Lisa.Vest@state.de.us or via the USPS to Lisa Vest, Hearing Officer, DNREC, 89 Kings Highway, Dover, DE 19901 (302) 739-9042. A public hearing on the proposed amendment will be held on November 7, 2015 beginning at 10:00 AM at the Lewes Fire Department, Station 2, 32198 Janice Road, Lewes, DE 19958. Please note that all comment submitted to the Department in this matter should be limited to the scope of this proposed regulatory promulgation, to wit: *only regarding the proposed amendments to the aforementioned regulations found at 7 DE Admin. Code 5102.*

7. PREPARED BY:

Jennifer Luoma 302-739-9921 9/11/2015 Jennifer.Luoma@state.de.us

***Please Note: Due to the size of the proposed regulation, it is not being published here. A copy of the regulation is available at:**

5102 Regulation Governing Beach Protection and the Use of Beaches

DEPARTMENT OF STATE
DIVISION OF PROFESSIONAL REGULATION**300 BOARD OF ARCHITECTS**

Statutory Authority: 24 Delaware Code, Section 306(a)(1) (24 Del.C. §306(a)(1))
24 DE Admin. Code 300

PUBLIC NOTICE**300 Board of Architects**

The Delaware Board of Architects, pursuant to 24 Del.C. §306(a)(1), proposes to revise regulations 6.2.1 and 6.2.1.1. The proposed change seeks to allow licensees to carry over up to four continuing education credits every calendar year.

The Board will hold a public hearing on the proposed regulation change on November 4, 2015 at 1:30 p.m., Second Floor Conference Room B, Cannon Building, 861 Silver Lake Blvd., Dover, DE 19904. Written comments should be sent to Flora Peer, Administrative Specialist of the Delaware Board of Architects, Cannon Building, 861 Silver Lake Blvd., Dover, DE 19904. Written comments will be accepted until November 19, 2015 pursuant to 29 Del.C. §10118(a).

A hearing for the proposed regulation change was originally scheduled to take place on September 2, 2015 in Conference Room B of the Cannon Building; however, due to a technical error as to notice of the hearing, it was canceled. As such, the proposed regulation is being republished without change in order to change the hearing date to November 4, 2015 as set forth above.

PROPOSED REGULATIONS

300 Board of Architects (Break in Continuity of Sections)

6.0 Registration

- 6.1 Duration - Each certificate of registration issued by the Board shall be valid for two years, or the expiration of the current licensing period.
- 6.2 Continuing Education requirements for renewal.
- 6.2.1 In addition to all other requirements for registration renewal, an architect must complete a minimum of 12 Continuing Education Hours each calendar year or be exempt from these continuing education requirements as provided below. Failure to comply with these requirements may result in non-renewal of the architect's registration. For an architect's initial registration period, the continuing education requirements shall be pro-rated at one Continuing Education Hour per month of registration, beginning with the first full month following the month of issuance, through the end of the renewal cycle. ~~In future renewals, Continuing Education Hours may be reused if there is overlap to meet the calendar year requirements.~~ Up to four CE hours can be carried over into a subsequent calendar year.
- 6.2.1.1 Continuing Education Hours. 12 Continuing Education Hours must be completed in Health, Safety, and Welfare Subjects acquired in Structured Educational Activities. Continuing Education Hours may be acquired at any location. ~~Excess Continuing Education Hours may not be credited to a future calendar year.~~ If an architect completes more than 12 continuing education hours in a calendar year, up to four excess hours may be carried forward and applied to the education requirement for the succeeding calendar year.

***Please Note: As the rest of the sections were not amended they are not being published. A copy of the regulation is available at:**

300 Board of Architects

DIVISION OF PROFESSIONAL REGULATION

2000 BOARD OF OCCUPATIONAL THERAPY PRACTICE

Statutory Authority: 24 Delaware Code, Section 2006(a)(1) (24 Del.C. §2006(a)(1))
24 DE Admin. Code 2000

PUBLIC NOTICE

2000 Board of Occupational Therapy Practice

Pursuant to 24 Del.C. §2006(a)(1), the Delaware Board of Occupational Therapy Practice has proposed revisions to its rules and regulations. The rules pertaining to renewal of an expired license are amended and a regulation addressing telehealth is added.

A public hearing will be held on November 4, 2015 at 4:30 p.m. in the second floor conference room A of the Cannon Building, 861 Silver Lake Boulevard, Dover, Delaware, where members of the public can offer comments on the amendments to the rules and regulations. Anyone wishing to receive a copy of the proposed rules and regulations may obtain a copy from the Delaware Board of Occupational Therapy Practice, 861 Silver Lake Boulevard, Dover, Delaware 19904. Persons wishing to submit written comments may forward these to the Board at the above address in accordance with 29 Del.C. §10118(a).

2000 Board of Occupational Therapy Practice (Break in Continuity of Sections)

2.0 Licensure Procedures:

(Break in Continuity Within Section)

- 2.7 ~~To apply for reinstatement of an expired license, an applicant shall submit (within one year of the expiration date):~~
 - 2.7.1 ~~A completed application for renewal;~~
 - 2.7.2 ~~Proof of continuing education attained within the past year (10 contact hours). The ten (10) hours must be in accordance with Rule 3.0 of these rules and regulations;~~
 - 2.7.3 ~~Licensure and late fee payable to the State of Delaware.~~
- 2.7 To apply for renewal of an expired license, an applicant shall (within one year of the expiration date):
 - 2.7.1 file a renewal application online at www.dpr.delaware.gov;
 - 2.7.2 attest on the renewal application to the completion of continuing education as required in accordance with Rule 3.0 of these regulations;
 - 2.7.3 pay a renewal and late fee as determined by the Division of Professional Regulation.
- 2.8. All late renewals shall be audited for compliance with CE renewal requirements;
- 2.9 Any licensee whose license is in an expired status as of July 31, 2014 must either renew the license no later than July 31, 2016 or fulfill the requirements of Rule 2.1.

(Break in Continuity of Sections)

4.0 Telehealth

- 4.1 Telehealth is the use of electronic communications to provide and deliver a host of health-related information and health-care services, including occupational therapy related information and services, over electronic devices. Telehealth encompasses a variety of occupational therapy promotion activities, including consultation, education, reminders, interventions, and monitoring of interventions.
- 4.2 The Occupational Therapist and Occupational Therapist Assistant (referred to as "licensee" for the purpose of this Board Rule) who provides treatment through telehealth shall meet the following requirements:
 - 4.2.1 Location of patient during treatment through telehealth
 - 4.2.1.1 The licensee shall have an active Delaware license in good standing to practice telehealth in the state of Delaware.
 - 4.2.1.2 During the telehealth treatment session, the patient shall be located within the borders of the State of Delaware.
 - 4.2.2 Informed consent
 - 4.2.2.1 Before services are provided through telehealth, the licensee shall obtain written, informed consent from the patient, or other appropriate person with authority to make health care treatment decisions for the patient. At minimum, the informed consent shall inform the patient and document acknowledgment of the risk and limitations of:
 - 4.2.2.1.1 The use of electronic communications in the provision of care;
 - 4.2.2.1.2 The potential breach of confidentiality, or inadvertent access, of protected health information using electronic communication in the provision of care; and
 - 4.2.2.1.3 The potential disruption of electronic communication in the use of telehealth.
 - 4.2.3 Confidentiality: The licensee shall ensure that the electronic communication is secure to maintain confidentiality of the patient's medical information as required by the Health Insurance Portability and Accountability Act (HIPAA) and other applicable Federal and State laws. Confidentiality shall be maintained through appropriate processes, practices, and technology, including disposal of electronic equipment and data.
 - 4.2.4 Competence and scope of practice
 - 4.2.4.1 The licensee shall be responsible for determining and documenting that telehealth is an appropriate level of care for the patient.

PROPOSED REGULATIONS

- 4.2.4.2 The licensee shall comply with the Board's law and rules and regulations and all current standards of care requirements applicable to onsite care.
- 4.2.4.3 The licensee shall limit the practice of telehealth to the area of competence in which proficiency has been gained through education, training, and experience.
- 4.2.4.4 All evaluations, including initial evaluations, and re-evaluations and scheduled discharges shall be performed face to face and not through telehealth.
- 4.2.4.5 Subject to the supervision requirements of Board Rule 1.2, every other supervisory visit may be performed via telehealth with the other alternating visit performed face to face.
- 4.2.4.6 The licensee shall document in the file or record which services were provided by telehealth.

45.0 Competence to Administer Treatment Modalities

Upon the request of the Board, or a member of the public, the licensee shall produce documentation demonstrating his or her competence to administer a particular treatment modality. Competence may be shown by documented professional education, such as continuing education, in-service training or accredited higher education programs with documented coursework related to the modality in question. Determination of competence is at the discretion of the Board.

56.0 Voluntary Treatment Option for Chemically Dependent or Impaired Professionals

- 56.1 If the report is received by the chairperson of the regulatory Board, that chairperson shall immediately notify the Director of Professional Regulation or his/her designate of the report. If the Director of Professional Regulation receives the report, he/she shall immediately notify the chairperson of the regulatory Board, or that chairperson's designate or designates.
- 56.2 The chairperson of the regulatory Board or that chairperson's designate or designates shall, within 7 days of receipt of the report, contact the individual in question and inform him/her in writing of the report, provide the individual written information describing the Voluntary Treatment Option, and give him/her the opportunity to enter the Voluntary Treatment Option.
- 56.3 In order for the individual to participate in the Voluntary Treatment Option, he/she shall agree to submit to a voluntary drug and alcohol screening and evaluation at a specified laboratory or health care facility. This initial evaluation and screen shall take place within 30 days following notification to the professional by the participating Board chairperson or that chairperson's designate(s).
- 56.4 A regulated professional with chemical dependency or impairment due to addiction to drugs or alcohol may enter into the Voluntary Treatment Option and continue to practice, subject to any limitations on practice the participating Board chairperson or that chairperson's designate or designates or the Director of the Division of Professional Regulation or his/her designate may, in consultation with the treating professional, deem necessary, only if such action will not endanger the public health, welfare or safety, and the regulated professional enters into an agreement with the Director of Professional Regulation or his/her designate and the chairperson of the participating Board or that chairperson's designate for a treatment plan and progresses satisfactorily in such treatment program and complies with all terms of that agreement. Treatment programs may be operated by professional Committees and Associations or other similar professional groups with the approval of the Director of Professional Regulation and the chairperson of the participating Board.
- 56.5 Failure to cooperate fully with the participating Board chairperson or that chairperson's designate or designates or the Director of the Division of Professional Regulation or his/her designate in regard to the Voluntary Treatment Option or to comply with their requests for evaluations and screens may disqualify the regulated professional from the provisions of the Voluntary Treatment Option, and the participating Board chairperson or that chairperson's designate or designates shall cause to be activated an immediate investigation and institution of disciplinary proceedings, if appropriate, as outlined in subsection 4-8 6.8 of this section.
- 56.6 The Voluntary Treatment Option may require a regulated professional to enter into an agreement which includes, but is not limited to, the following provisions:

- 56.6.1 Entry of the regulated professional into a treatment program approved by the participating Board. Board approval shall not require that the regulated professional be identified to the Board. Treatment and evaluation functions must be performed by separate agencies to assure an unbiased assessment of the regulated professional's progress.
- 56.6.2 Consent to the treating professional of the approved treatment program to report on the progress of the regulated professional to the chairperson of the participating Board or to that chairperson's designate or designates or to the Director of the Division of Professional Regulation or his/her designate at such intervals as required by the chairperson of the participating Board or that chairperson's designate or designates or the Director of the Division of Professional Regulation or his/her designate, and such person making such report will not be liable when such reports are made in good faith and without malice.
- 56.6.3 Consent of the regulated professional, in accordance with applicable law, to the release of any treatment information from anyone within the approved treatment program.
- 56.6.4 Agreement by the regulated professional to be personally responsible for all costs and charges associated with the Voluntary Treatment Option and treatment program(s). In addition, the Division of Professional Regulation may assess a fee to be paid by the regulated professional to cover administrative costs associated with the Voluntary Treatment Option. The amount of the fee imposed under this subparagraph shall approximate and reasonably reflect the costs necessary to defray the expenses of the participating Board, as well as the proportional expenses incurred by the Division of Professional Regulation in its services on behalf of the Board in addition to the administrative costs associated with the Voluntary Treatment Option.
- 56.6.5 Agreement by the regulated professional that failure to satisfactorily progress in such treatment program shall be reported to the participating Board's chairperson or his/her designate or designates or to the Director of the Division of Professional Regulation or his/her designate by the treating professional who shall be immune from any liability for such reporting made in good faith and without malice.
- 56.6.6 Compliance by the regulated professional with any terms or restrictions placed on professional practice as outlined in the agreement under the Voluntary Treatment Option.
- 56.7 The regulated professional's records of participation in the Voluntary Treatment Option will not reflect disciplinary action and shall not be considered public records open to public inspection. However, the participating Board may consider such records in setting a disciplinary sanction in any future matter in which the regulated professional's chemical dependency or impairment is an issue.
- 56.8 The participating Board's chairperson, his/her designate or designates or the Director of the Division of Professional Regulation or his/her designate may, in consultation with the treating professional at any time during the Voluntary Treatment Option, restrict the practice of a chemically dependent or impaired professional if such action is deemed necessary to protect the public health, welfare or safety.
- 56.9 If practice is restricted, the regulated professional may apply for unrestricted licensure upon completion of the program.
- 56.10 Failure to enter into such agreement or to comply with the terms and make satisfactory progress in the treatment program shall disqualify the regulated professional from the provisions of the Voluntary Treatment Option, and the participating Board shall be notified and cause to be activated an immediate investigation and disciplinary proceedings as appropriate.
- 56.11 Any person who reports pursuant to this section in good faith and without malice shall be immune from any civil, criminal or disciplinary liability arising from such reports, and shall have his/her confidentiality protected if the matter is handled in a nondisciplinary matter.
- 56.12 Any regulated professional who complies with all of the terms and completes the Voluntary Treatment Option shall have his/her confidentiality protected unless otherwise specified in a participating Board's rules and regulations. In such an instance, the written agreement with the regulated professional shall include the potential for disclosure and specify those to whom such information may be disclosed.

67.0 Crimes substantially related to practice of occupational therapy

- 67.1 Conviction of any of the following crimes, or of the attempt to commit or of a conspiracy to commit or conceal or of solicitation to commit the following crimes, is deemed to be a crime substantially related to the practice of occupational therapy in the State of Delaware without regard to the place of conviction:
- 67.1.1 Unlawful harm to law enforcement or seeing eye dogs. 7 **Del.C.** §1717
 - 67.1.2 Aggravated menacing. 11 **Del.C.** §602(b)
 - 67.1.3 Reckless endangering. 11 **Del.C.** §604.
 - 67.1.4 Abuse of a pregnant female in the second degree. 11 **Del.C.** §605
 - 67.1.5 Abuse of a pregnant female in the first degree. 11 **Del.C.** §606
 - 67.1.6 Assault in the second degree. 11 **Del.C.** §612
 - 67.1.7 Assault in the first degree. 11 **Del.C.** §613
 - 67.1.8 Felony abuse of a sports official. 11 **Del.C.** §614
 - 67.1.9 Assault by abuse of neglect. 11 **Del.C.** §615
 - 67.1.10 Felony Terroristic threatening. 11 **Del.C.** §621
 - 67.1.11 Unlawful administering drugs. 11 **Del.C.** §625
 - 67.1.12 Unlawful administering controlled substance or counterfeit substance or narcotic drugs. 11 **Del.C.** §626
 - 67.1.13 Vehicular assault in the first degree. 11 **Del.C.** §629
 - 67.1.14 Criminally negligent homicide. 11 **Del.C.** §631
 - 67.1.15 Manslaughter. 11 **Del.C.** §632
 - 67.1.16 Murder by abuse or neglect in the second degree. 11 **Del.C.** §633
 - 67.1.17 Murder by abuse or neglect in the first degree. 11 **Del.C.** §634
 - 67.1.18 Murder in the second degree. 11 **Del.C.** §635
 - 67.1.19 Murder in the first degree. 11 **Del.C.** §636
 - 67.1.20 Sexual harassment. 11 **Del.C.** §763
 - 67.1.21 Unlawful sexual contact in the second degree. 11 **Del.C.** §768
 - 67.1.22 Unlawful sexual contact in the first degree. 11 **Del.C.** §769
 - 67.1.23 Rape in the fourth degree. 11 **Del.C.** §770
 - 67.1.24 Rape in the third degree. 11 **Del.C.** §771
 - 67.1.25 Rape in the second degree. 11 **Del.C.** §772
 - 67.1.26 Rape in the first degree. 11 **Del.C.** §773
 - 67.1.27 Sexual extortion. 11 **Del.C.** §776
 - 67.1.28 Bestiality. 11 **Del.C.** §777
 - 67.1.29 Continuous sexual abuse of a child. 11 **Del.C.** §778
 - 67.1.30 Dangerous crime against a child. 11 **Del.C.** §779
 - 67.1.31 Unlawful imprisonment in the first degree. 11 **Del.C.** §782
 - 67.1.32 Kidnapping in the second degree. 11 **Del.C.** §783
 - 67.1.33 Kidnapping in the first degree. 11 **Del.C.** §783A
 - 67.1.34 Acts constituting coercion. 11 **Del.C.** §791
 - 67.1.35 Burglary in the second degree. 11 **Del.C.** §825
 - 67.1.36 Burglary in the first degree. 11 **Del.C.** §826
 - 67.1.37 Robbery in the second degree. 11 **Del.C.** §831
 - 67.1.38 Robbery in the first degree. 11 **Del.C.** §832
 - 67.1.39 Carjacking in the second degree. 11 **Del.C.** §835
 - 67.1.40 Carjacking in the first degree. 11 **Del.C.** §836
 - 67.1.41 Extortion. 11 **Del.C.** §846
 - 67.1.42 Identity theft. 11 **Del.C.** §854

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- 67.1.43 Felony forgery. 11 **Del.C.** §861
- 67.1.44 Falsifying business records. 11 **Del.C.** §871
- 67.1.45 Felony unlawful use of a credit card. 11 **Del.C.** §903
- 67.1.46 Insurance fraud. 11 **Del.C.** §913
- 67.1.47 Health care fraud. 11 **Del.C.** §913A
- 67.1.48 Dealing in children. 11 **Del.C.** §1100
- 67.1.49 Endangering the welfare of a child. 11 **Del.C.** §1102
- 67.1.50 Endangering the welfare of an incompetent person. 11 **Del.C.** §1105
- 67.1.51 Unlawfully dealing with a child. 11 **Del.C.** §1106
- 67.1.52 Sexual exploitation of a child. 11 **Del.C.** §1108
- 67.1.53 Unlawful dealing in child pornography. 11 **Del.C.** §1109
- 67.1.54 Possession of child pornography. 11 **Del.C.** §1111
- 67.1.55 Sexual offenders; prohibitions from school zones. 11 **Del.C.** §1112
- 67.1.56 Sexual solicitation of a child. 11 **Del.C.** §1112A
- 67.1.57 Terroristic threatening of public officials or public servants. 11 **Del.C.** §1240
- 67.1.58 Felony abetting the violation of driver's license restrictions. 11 **Del.C.** §1249
- 67.1.59 Felony offenses against law enforcement animals. 11 **Del.C.** §1250
- 67.1.60 Felony hate crimes. 11 **Del.C.** §1304
- 67.1.61 Felony stalking. 11 **Del.C.** §1312A
- 67.1.62 Felony cruelty to animals. 11 **Del.C.** §1325
- 67.1.63 Felony maintaining a dangerous animal. 11 **Del.C.** §1327(a)
- 67.1.64 Felony violation of privacy. 11 **Del.C.** §1335(a)
- 67.1.65 Adulteration. 11 **Del.C.** §1339
- 67.1.66 Promoting prostitution in the second degree. 11 **Del.C.** §1352
- 67.1.67 Promoting prostitution in the first degree. 11 **Del.C.** §1353
- 67.1.68 Obscenity. 11 **Del.C.** §1361
- 67.1.69 Carrying a concealed deadly weapon. 11 **Del.C.** §1442
- 67.1.70 Felony unlawful dealing with a dangerous weapon. 11 **Del.C.** §1445(a)
- 67.1.71 Felony possession of a deadly weapon during the commission of a felony. 11 **Del.C.** §1447
- 67.1.72 Possession of a firearm during a commission of a felony. 11 **Del.C.** §1447A
- 67.1.73 Possession and purchase of deadly weapons by persons prohibited. 11 **Del.C.** §1448
- 67.1.74 Felony Possession of a weapon in a Safe School and Recreation Zone. 11 **Del.C.** §1457
- 67.1.75 Duty to report child abuse or neglect. 16 **Del.C.** §903
- 67.1.76 Abuse, neglect, mistreatment or financial exploitation of residents or patients in a nursing or similar facility. 16 **Del.C.** §1136
- 67.1.77 Felony falsification or destruction of records related to maintenance medical treatment. 16 **Del.C.** §2513
- 67.1.78 Manufacture, delivery or possession with intent to deliver schedule I or II narcotic drugs. 16 **Del.C.** §4751
- 67.1.79 Manufacture, delivery or possession with intent to deliver Schedule I, II, III, IV, or V non-narcotic drugs. 16 **Del.C.** §4752
- 67.1.80 Unlawful delivery or noncontrolled substances. 16 **Del.C.** §4752A.
- 67.1.81 Possession, consumption, or use of controlled substances. 16 **Del.C.** §4753.
- 67.1.82 Trafficking in marijuana, cocaine, illegal drugs, methamphetamines, L.S.D., or designer drugs. 16 **Del.C.** §4753A
- 67.1.83 Possession, consumption, or use of non-narcotic controlled substances classified in Schedule I, II, III, IV, or V. 16 **Del.C.** § 4754

PROPOSED REGULATIONS

- 67.1.84 Crimes related to controlled substances. 16 **Del.C.** §4756
 67.1.85 Distribution of controlled substances to persons under 21 years of age. 16 **Del.C.** §4761
 67.1.86 Distribution, delivery or possession of a controlled substance within 1,000 feet of school property. 16 **Del.C.** §4767
 67.1.87 Distribution, delivery or possession of a controlled substance within 300 feet of park, recreation area, church, synagogue or other place of worship. 16 **Del.C.** §4768
 67.1.88 Felony obtaining benefit under false representation. 31 **Del.C.** §1003
 67.1.89 Felony falsification of reports, statements, or documents. 31 **Del.C.** §1004
 67.1.90 Kickback schemes and solicitation. 31 **Del.C.** §1005
 67.1.91 Conversion of benefit payment. 31 **Del.C.** §1006
 67.1.92 Intentional abuse, neglect, mistreatment, or exploitation of an infirm adult. 31 **Del.C.** §3913
 67.2 Crimes substantially related to the practice of occupational therapy shall be deemed to include any crimes under any federal law, state law, or valid town, city or county ordinance, that are substantially similar to the crimes identified in this rule.

***Please Note: As the rest of the sections were not amended they are not being published. A copy of the regulation is available at:**

2000 Board of Occupational Therapy Practice

DIVISION OF PROFESSIONAL REGULATION

2500 BOARD OF PHARMACY

Statutory Authority: 24 Delaware Code, Section 2506(a)(1) (24 **Del.C.** §2506(a)(1))
24 **DE Admin. Code** 2500

PUBLIC NOTICE

2500 Board of Pharmacy

Pursuant to 24 **Del.C.** §2506(a)(1), the Delaware Board of Pharmacy has proposed revisions to its rules and regulations.

A public hearing was held on August 19, 2015 at 9:30 a.m. to address proposed revisions concerning the subject of pharmaceutical compounding. Regulation 5.1.7 was amended to provide that compounded products may *not* be sold to a practitioner for use in his or her office to administer to patients. Regulation 10.0 was re-written to establish comprehensive requirements for non-sterile and sterile compounding consistent with USP Chapters 795 and 797.

In accordance with 29 **Del.C.** §10118(a), the final date to receive written comments was September 3, 2015. Extensive written comment was submitted. The Board deliberated on all of the comments at its meeting on September 16, 2015. While the Board voted to accept Regulation 10.0 as proposed, the Board decided to make substantive revisions to Regulation 5.1.7.1. The proposed substantive revisions amend Regulation 5.1.7.1 to state that non-patient specific compounded products may not be sold to a practitioner for office use unless covered under federal authority. The signed Final Order with respect to Regulation 10.0 will be submitted for publication in the *Register of Regulations* on November 1, 2015, after the Board members have affixed their signatures.

A public hearing will be held on October 21, 2015 at 9:30 a.m. in the second floor conference room A of the Cannon Building, 861 Silver Lake Boulevard, Dover, Delaware, where members of the public can offer comments on the amendments to the rules and regulations. Anyone wishing to receive a copy of the proposed rules and regulations may obtain a copy from the Delaware Board of Pharmacy, 861 Silver Lake Boulevard, Dover, Delaware 19904. Persons wishing to submit written comments may forward these to the Board liaison, Christine Mast, at the above address.

In accordance with 29 **Del.C.** §10118(a), the final date to receive written comments will be November 5, 2015 which is 15 days following the public hearing. The Board will deliberate on all of the public comment at its next

regularly scheduled meeting, at which time it will determine whether to adopt the rules and regulations as proposed or make additional changes due to the public comment.

**2500 Board of Pharmacy
(Break in Continuity of Sections)**

5.0 Dispensing

- 5.1 The practice of dispensing shall include, but not be limited to the following acts which shall be performed only by a pharmacist, or a pharmacy intern or student participating in an approved College of Pharmacy coordinated, practical experience program under the direct supervision of a pharmacist.

(Break in Continuity Within Section)

- 5.1.7 Compounded medications for office use.

- 5.1.7.1 ~~On the order of a practitioner, Non-patient specific~~ compounded products may not be sold to the practitioner for use in his or her office to administer to individual patients, ~~but not for resale~~ unless authorized by Federal authority.

***Please Note: As the rest of the sections were not amended they are not being published. A copy of the regulation is available at:**

2500 Board of Pharmacy

DIVISION OF PROFESSIONAL REGULATION

3000 BOARD OF PROFESSIONAL COUNSELORS OF MENTAL HEALTH AND CHEMICAL DEPENDENCY PROFESSIONALS

Statutory Authority: 24 Delaware Code, Section 3006(a)(1) (24 Del.C. §3006(a)(1))
24 DE Admin. Code 3000

PUBLIC NOTICE

3000 Board of Professional Counselors of Mental Health and Chemical Dependency Professionals

The Delaware Board of Mental Health and Chemical Dependency Professionals, pursuant to 24 Del.C. §3006(a)(1), proposes to revise its regulations. The proposed amendments to the regulations seek to clarify and provide more detailed information regarding the credentials and experience required of supervisors of LACMHs and LPCMH candidates.

The Board will hold a public hearing on the proposed rule change on October 28, 2015 at 12:00 p.m., in the Second Floor Conference Room A, Cannon Building, 861 Silver Lake Blvd., Dover, DE 19904. Written comments should be sent to Jessica Williams, Administrator of the Delaware Board of Mental Health and Chemical Dependency Professionals, Cannon Building, 861 Silver Lake Blvd, Dover, DE 19904. Written comments will be accepted until November 12, 2015.

3000 Board of Professional Counselors of Mental Health and Chemical Dependency Professionals (Break in Continuity of Sections)

3.0 Licensure for Associate Counselors of Mental Health (LACMH)

- 3.1 Experience. LACMH applicants must provide a written plan for acquiring the LPCMH experience requirements contained in regulation 2.1.3 above. The plan must be signed by the applicant's proposed supervisor. Supervisors must be acceptable to the Board.

- 3.1.1 To be acceptable to the Board, the supervisor must ~~be~~ have been in practice for two years post licensure in this or any other jurisdiction without having been subject to any disciplinary actions;
and

PROPOSED REGULATIONS

- 3.1.2 Must have obtained a minimum of six hours of CEs in Clinical Supervision within two years of the application to be an acceptable supervisor for an LAMCH or LPCMH, or have a Center for Continuing Education's Approved Clinical Supervisor or other National Behavioral Health Organization's supervisor credential in good standing acceptable to the board.
- 3.1.3 The Supervisor should be a Delaware LPCMH. If a Delaware LPCMH is not available, the LACMH applicant may request approval from the board for the utilization of a professionally licensed professional by the Delaware Board of Mental Health and Chemical Dependency Professionals provided the applicant can document a compelling reason to utilize another licensed professional and the supervisor can demonstrate sufficient competence to supervise a LACMH.
- ~~3.1.1.1~~ A Delaware LPCMH
- ~~3.1.1.2~~ If a Delaware LPCMH is not available, the LACMH applicant may request approval from the board for the utilization of a professionally licensed professional by the Delaware Board of Mental Health and Chemical Dependency Professionals provided the applicant can document a compelling reason to utilize another licensed professional and the supervisor can demonstrate sufficient competence to supervise a LACMH;
- ~~3.1.1.34~~ If a supervisor licensed by this board is not available, the LACMH applicant may request approval from the board for supervision from a licensed professional counselor of mental health from another state who has held a license in good standing for a minimum of five (5) years in that state, has a certification from the National Board of Certified Counselors, and is pre approved by the Board.
- ~~3.1.1.45~~ Only if one of the above professionals is not available, an individual with any of the following licenses in any state and training in professional mental health counseling supervision can be used: clinical social worker, psychologist practicing in the clinical realm, or physician specializing in psychiatry if the supervisor is pre approved by the Board.
- ~~3.1.1.56~~ If a proposed supervisor is not a professional licensed by the Delaware Board of Professional Counselors of Mental Health and Chemical Dependency Counselors, the proposed supervisor must attest, on a form provided by the Board for this purpose, that he/she has read and is familiar with the requirements for licensure in Delaware, including the applicable statutes, rules and regulations; that he/she has a minimum of five years of good standing, post licensure experience; and that she/he has the training to provide clinical supervision.

***Please Note: As the rest of the sections were not amended they are not being published. A copy of the regulation is available at:**

3000 Board of Professional Counselors of Mental Health and Chemical Dependency Professionals

DIVISION OF PROFESSIONAL REGULATION

3700 BOARD OF SPEECH/LANGUAGE PATHOLOGISTS, AUDIOLOGISTS AND HEARING AID DISPENSERS

Statutory Authority: 24 Delaware Code, Section 3706(a)(1) (24 Del.C. §3706(a)(1))
24 DE Admin. Code 3700

PUBLIC NOTICE

3700 Board of Examiners of Speech/Language Pathologists, Audiologists and Hearing Aid Dispensers

Pursuant to 24 Del.C. §3706(a)(1), the Board of Speech/Language Pathologists, Audiologists and Hearing Aid Dispensers ("Board") has proposed revisions to its rules and regulations.

A public hearing will be held on November 17, 2015 at 2:00 p.m. in the second floor conference room B of the Cannon Building, 861 Silver Lake Boulevard, Dover, Delaware, where members of the public can offer comments. Anyone wishing to receive a copy of the proposed rules and regulations may obtain a copy from the Board of

Speech/Language Pathologists, Audiologists and Hearing Aid Dispensers, 861 Silver Lake Boulevard, Dover, Delaware 19904. Persons wishing to submit written comments may forward these to the Board at the above address.

The Board's proposed amendments strike the current Rule 9.2.1.4, which addresses practice by telecommunications, and add a new Rule 10.0, pertaining to telepractice. The new Rule 10.0 sets forth standards and requirements in order to allow licensees to engage in telepractice while protecting the public.

In accordance with 29 **Del.C.** §10118(a), the final date to receive written comments will be December 2, 2015, which is 15 days following the public hearing. The Board will deliberate on all of the public comment at its next regularly scheduled meeting, at which time it will determine whether to adopt the rules and regulations as proposed or make additional changes due to the public comment.

3700 Board of Examiners of Speech/Language Pathologists, Audiologists and Hearing Aid Dispensers
(Break in Continuity of Sections)

9.0 Code of Ethics for Speech-Language Pathologists, Audiologists, and Hearing Aid Dispensers

- 9.1 PREAMBLE. The preservation of the highest standards of conduct and integrity is vital to achieving the statutory declaration of objectives in 24 **Del.C.** §3701. Adopting a code of ethics by regulation puts licensees on notice of the kinds of activity that violate the level of care and protection to which the clients are entitled. The provisions are not intended to be all-inclusive but rather they should serve as examples of obligations that must be satisfied to maintain minimum standards.
- 9.2 Standards of Professional Conduct
- 9.2.1 A licensee who violates the following Standards of Professional Conduct may be guilty of illegal, negligent, or incompetent practice and disciplined pursuant to 24 **Del.C.** §3715(a)(2).
- 9.2.1.1 Licensees shall provide all services competently. Competent service refers to the use of reasonable care and diligence ordinarily employed by similarly licensed individuals.
- 9.2.1.2 Licensees shall use every resource, including referral, to provide quality service.
- 9.2.1.3 Licensees shall maintain reasonable documentation of professional services rendered.
- 9.2.1.4 ~~Licensees shall not evaluate or treat a client with speech, language, or hearing disorders solely by correspondence. Correspondence includes telecommunication.~~
- 9.2.1.5 Licensees shall delegate responsibility only to qualified individuals as permitted by law with appropriate supervision.
- 9.2.1.6 Licensees who have evidence that a practitioner has violated the Code of Ethics or other law or regulation shall present that information by complaint to the Division of Professional Regulation for investigation.

(Break in Continuity Within Section)

10.0 Telepractice

- 10.1 Telepractice is the application of telecommunications technology to the delivery of speech/language pathology, audiology and hearing aid dispensing professional services at a distance by linking clinician to client or clinician to clinician for intervention and/or consultation, subject to Board Rule 10.2.4.5, intervention and/or consultation. Telepractice encompasses a variety of health care and health promotion activities, including education, advice, reminders, interventions, and monitoring of interventions.
- 10.2 The Speech/Language Pathologist, Audiologist, or Hearing Aid Dispenser (referred to as "licensee" for the purpose of this Board Rule) who provides treatment through telepractice shall meet the following requirements:
- 10.2.1 Location of client during treatment through telepractice.
- 10.2.1.1 The licensee shall have an active Delaware license in good standing to provide services through telepractice in the state of Delaware.

PROPOSED REGULATIONS

- 10.2.1.2 During the telepractice treatment session, the client shall be located within the borders of the State of Delaware.
- 10.2.2 Informed consent.
- 10.2.2.1 Before services are provided through telepractice, the licensee shall obtain written, informed consent from the client, or other appropriate person with authority to make health care treatment decisions for the client. At minimum, the informed consent shall inform the client and document acknowledgment of the risk and limitations of:
- 10.2.2.1.1 The use of electronic communications in the provision of care;
- 10.2.2.1.2 The potential breach of confidentiality, or inadvertent access, of protected health information using electronic communication in the provision of care; and
- 10.2.2.1.3 The potential disruption of electronic communication in the use of telepractice.
- 10.2.3 Confidentiality: The licensee shall ensure that the electronic communication is secure to maintain confidentiality of the client's health and/or educational information as required by the Health Insurance Portability and Accountability Act (HIPAA) and other applicable Federal and State laws. Confidentiality shall be maintained through appropriate processes, practices, and technology, including disposal of electronic equipment and data.
- 10.2.4 Competence and scope of practice.
- 10.2.4.1 The licensee shall be responsible for determining and documenting that telepractice is an appropriate level of care for the client only after an initial face to face evaluation.
- 10.2.4.2 All evaluations, including initial evaluations, and re-evaluations and scheduled discharges shall be performed face to face and not through telepractice.
- 10.2.4.3 The licensee shall comply with the Board's law and rules and regulations and all current standards of care requirements applicable to onsite care.
- 10.2.4.4 The licensee shall limit the practice of telepractice to the area of competence in which proficiency has been gained through education, training, and experience.
- 10.2.4.5 Licensees who deliver telepractice services must possess specialized knowledge and skills in selecting interventions that are appropriate to the technology and that take into consideration client and disorder variables.
- 10.2.4.6 The licensee shall document in the file or record which services were provided by telepractice.

101.0 Voluntary Treatment Option for Chemically Dependent or Impaired Professionals

- 101.1 If the report is received by the chairperson of the regulatory Board, that chairperson shall immediately notify the Director of Professional Regulation or his/her designate of the report. If the Director of Professional Regulation receives the report, he/she shall immediately notify the chairperson of the regulatory Board, or that chairperson's designate or designates.
- 101.2 The chairperson of the regulatory Board or that chairperson's designate or designates shall, within 7 days of receipt of the report, contact the individual in question and inform him/her in writing of the report, provide the individual written information describing the Voluntary Treatment Option, and give him/her the opportunity to enter the Voluntary Treatment Option.
- 101.3 In order for the individual to participate in the Voluntary Treatment Option, he/she shall agree to submit to a voluntary drug and alcohol screening and evaluation at a specified laboratory or health care facility. This initial evaluation and screen shall take place within 30 days following notification to the professional by the participating Board chairperson or that chairperson's designate(s).
- 101.4 A regulated professional with chemical dependency or impairment due to addiction to drugs or alcohol may enter into the Voluntary Treatment Option and continue to practice, subject to any limitations on practice the participating Board chairperson or that chairperson's designate or designates or the Director of the Division of Professional Regulation or his/her designate may, in consultation with the treating professional, deem necessary, only if such action will not endanger the public health, welfare or safety, and the regulated professional enters into an agreement with the Director of Professional Regulation or his/her designate and the chairperson of the participating Board or that chairperson's

designate for a treatment plan and progresses satisfactorily in such treatment program and complies with all terms of that agreement. Treatment programs may be operated by professional Committees and Associations or other similar professional groups with the approval of the Director of Professional Regulation and the chairperson of the participating Board.

- 101.5 Failure to cooperate fully with the participating Board chairperson or that chairperson's designate or designates or the Director of the Division of Professional Regulation or his/her designate in regard to the Voluntary Treatment Option or to comply with their requests for evaluations and screens may disqualify the regulated professional from the provisions of the Voluntary Treatment Option, and the participating Board chairperson or that chairperson's designate or designates shall cause to be activated an immediate investigation and institution of disciplinary proceedings, if appropriate, as outlined in subsection 10.8 of this section.
- 101.6 The Voluntary Treatment Option may require a regulated professional to enter into an agreement which includes, but is not limited to, the following provisions:
- 101.6.1 Entry of the regulated professional into a treatment program approved by the participating Board. Board approval shall not require that the regulated professional be identified to the Board. Treatment and evaluation functions must be performed by separate agencies to assure an unbiased assessment of the regulated professional's progress.
- 101.6.2 Consent to the treating professional of the approved treatment program to report on the progress of the regulated professional to the chairperson of the participating Board or to that chairperson's designate or designates or to the Director of the Division of Professional Regulation or his/her designate at such intervals as required by the chairperson of the participating Board or that chairperson's designate or designates or the Director of the Division of Professional Regulation or his/her designate, and such person making such report will not be liable when such reports are made in good faith and without malice.
- 101.6.3 Consent of the regulated professional, in accordance with applicable law, to the release of any treatment information from anyone within the approved treatment program.
- 101.6.4 Agreement by the regulated professional to be personally responsible for all costs and charges associated with the Voluntary Treatment Option and treatment program(s). In addition, the Division of Professional Regulation may assess a fee to be paid by the regulated professional to cover administrative costs associated with the Voluntary Treatment Option. The amount of the fee imposed under this subparagraph shall approximate and reasonably reflect the costs necessary to defray the expenses of the participating Board, as well as the proportional expenses incurred by the Division of Professional Regulation in its services on behalf of the Board in addition to the administrative costs associated with the Voluntary Treatment Option.
- 101.6.5 Agreement by the regulated professional that failure to satisfactorily progress in such treatment program shall be reported to the participating Board's chairperson or his/her designate or designates or to the Director of the Division of Professional Regulation or his/her designate by the treating professional who shall be immune from any liability for such reporting made in good faith and without malice.
- 101.6.6 Compliance by the regulated professional with any terms or restrictions placed on professional practice as outlined in the agreement under the Voluntary Treatment Option.
- 101.7 The regulated professional's records of participation in the Voluntary Treatment Option will not reflect disciplinary action and shall not be considered public records open to public inspection. However, the participating Board may consider such records in setting a disciplinary sanction in any future matter in which the regulated professional's chemical dependency or impairment is an issue.
- 101.8 The participating Board's chairperson, his/her designate or designates or the Director of the Division of Professional Regulation or his/her designate may, in consultation with the treating professional at any time during the Voluntary Treatment Option, restrict the practice of a chemically dependent or impaired professional if such action is deemed necessary to protect the public health, welfare or safety.
- 101.9 If practice is restricted, the regulated professional may apply for unrestricted licensure upon completion of the program.

- 101.10 Failure to enter into such agreement or to comply with the terms and make satisfactory progress in the treatment program shall disqualify the regulated professional from the provisions of the Voluntary Treatment Option, and the participating Board shall be notified and cause to be activated an immediate investigation and disciplinary proceedings as appropriate.
- 101.11 Any person who reports pursuant to this section in good faith and without malice shall be immune from any civil, criminal or disciplinary liability arising from such reports, and shall have his/her confidentiality protected if the matter is handled in a nondisciplinary matter.
- 101.12 Any regulated professional who complies with all of the terms and completes the Voluntary Treatment Option shall have his/her confidentiality protected unless otherwise specified in a participating Board's rules and regulations. In such an instance, the written agreement with the regulated professional shall include the potential for disclosure and specify those to whom such information may be disclosed.

142.0 Crimes substantially related to the practice of speech/language pathology, audiology, and hearing aid dispensing.

- 142.1 Conviction of any of the following crimes, or of the attempt to commit or of a conspiracy to commit or conceal or of the solicitation to commit any of the following crimes, is deemed to be a crime substantially related to the practice of speech/language pathology, audiology, and hearing aid dispensing in the State of Delaware without regard to the place of conviction:
- 142.1.1 Assault in the second degree. 11 **Del.C.** §612.
 - 142.1.2 Assault in the first degree. 11 **Del.C.** §613.
 - 142.1.3 Assault by abuse or neglect. 11 **Del.C.** §615.
 - 142.1.4 Terroristic threatening; felony. 11 **Del.C.** §621
 - 142.1.5 Murder by abuse or neglect in the second degree. 11 **Del.C.** §633.
 - 142.1.6 Murder by abuse or neglect in the first degree. 11 **Del.C.** §634.
 - 142.1.7 Murder in the second degree. 11 **Del.C.** §635.
 - 142.1.8 Murder in the first degree. 11 **Del.C.** §636.
 - 142.1.9 Unlawful Sexual Contact in the first degree. 11 **Del.C.** 769
 - 142.1.10 Rape in the fourth degree. 11 **Del.C.** §770
 - 142.1.11 Rape in the third degree. 11 **Del.C.** §771
 - 142.1.12 Rape in the second degree. 11 **Del.C.** §772
 - 142.1.13 Rape in the first degree. 11 **Del.C.** §773
 - 142.1.14 Sexual extortion. 11 **Del.C.** §776
 - 142.1.15 Continuous sexual abuse of a child. 11 **Del.C.** §778
 - 142.1.16 Dangerous crime against a child. 11 **Del.C.** §777
 - 142.1.17 Sex offender unlawful sexual conduct against a child. 11 **Del.C.** §777A
 - 142.1.18 Sexual abuse of a child by a person in a position of trust, authority or supervision in the first degree. 11 **Del.C.** §778
 - 142.1.19 Sexual abuse of a child by a person in a position of trust, authority or supervision in the second degree. 11 **Del.C.** §778A
 - 142.1.20 Kidnapping in the second degree. 11 **Del.C.** §783
 - 142.1.21 Kidnapping in the first degree. 11 **Del.C.** §783A
 - 142.1.22 Identity theft. 11 **Del.C.** §854
 - 142.1.23 Forgery. 11 **Del.C.** §861
 - 142.1.24 Insurance fraud. 11 **Del.C.** §913
 - 142.1.25 Health care fraud. 11 **Del.C.** §913A
 - 142.1.26 Dealing in children. 11 **Del.C.** §1100
 - 142.1.27 Endangering the welfare of a child. 11 **Del.C.** §1102
 - 142.1.28 Crime against vulnerable adult. 11 **Del.C.** §1105

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- 142.1.29 Sexual exploitation of a child. 11 **Del.C.** §1108
 - 142.1.30 Unlawful dealing in child pornography. 11 **Del.C.** §1109
 - 142.1.31 Possession of child pornography. 11 **Del.C.** §1111
 - 142.1.32 Sexual offenders; prohibitions from school zones. 11 **Del.C.** §1112
 - 142.1.33 Sexual solicitation of a child. 11 **Del.C.** §1112A
 - 142.1.34 Perjury in the first degree. 11 **Del.C.** §1223
 - 142.1.35 Hate crimes (felony). 11 **Del.C.** §1304(a)
 - 142.1.36 Stalking; felony. 11 **Del.C.** §1312A
 - 142.1.37 Duty to report child abuse or neglect. 16 **Del.C.** §903
 - 142.1.38 Abuse, neglect, mistreatment or financial exploitation of residents or patients. 16 **Del.C.** §1136.
 - 142.1.39 Trafficking in marijuana, cocaine, illegal drugs, methamphetamines, L.S.D., or designer drugs. 16 **Del.C.** §4753A
 - 142.1.40 Distribution, delivery or possession of a controlled substance within 1,000 feet of school property. 16 **Del.C.** §4767
 - 142.1.41 Distribution, delivery or possession of a controlled substance within 300 feet of park, recreation area, church, synagogue or other place of worship. 16 **Del.C.** §4768
 - 142.1.42 Abuse, neglect, mistreatment or financial exploitation of an infirm adult. 31 **Del.C.** §3913
 - 142.2 Crimes substantially related to the practice speech/language pathology, audiology, and hearing aid dispensing shall be deemed to include any crimes under any federal law, state law, or valid town, city or county ordinance, that are substantially similar to the crimes identified in this rule.

***Please Note: As the rest of the sections were not amended they are not being published. A copy of the regulation is available at:**

3700 Board of Examiners of Speech/Language Pathologists, Audiologists and Hearing Aid Dispensers

**EXECUTIVE DEPARTMENT
OFFICE OF MANAGEMENT AND BUDGET**

Statutory Authority: 29 Delaware Code, Section 10409 (29 **Del.C.** §10409)

PUBLIC NOTICE

Guidelines for Agency Regulatory Statements Required under the Regulatory Flexibility Act

Guidelines and form to assist state agencies in preparing the agency regulatory statements required pursuant to Chapter 104 of Title 29.

SUMMARY OF PROPOSED ACTION

Pursuant to its authority under the Regulatory Flexibility Act, 29 **Del.C.** §10409 et seq. the Office of Management and Budget proposes these guidelines and form to establish procedures relating to the preparation of agency regulatory statements.

NOTICE OF PUBLIC COMMENT PERIOD

The Office of Management and Budget will hold a public hearing at which members of the public may present comments on the proposed guidelines and form on October 20, 2015 from 2 p.m. to 3 p.m. at the Tatnall Building, room 112, 150 Martin Luther King Jr. Blvd South, Dover, DE 19901. Additionally, interested persons may submit written comments to Robert Scoglietti, via email at robert.scoglietti@state.de.us or via U.S. Mail at the Office of Management and Budget, attn.: Robert Scoglietti, 122 Martin Luther King Blvd. South, 3rd Floor, Dover, DE 19901.

The public comment period will close on November 5, 2015.

Guidelines for Agency Regulatory Statements Required under the Regulatory Flexibility Act

Regulatory Flexibility Analysis and Impact Statement Guidelines for State Agencies, Boards, and Commissions For Regulations Affecting Small Businesses or Individuals per the Regulatory Transparency and Accountability Acts of 2015

Introduction

Beginning January 1, 2016, agencies proposing new or amended regulations that affect small businesses or individuals are required, under the new Regulatory Transparency and Accountability Acts of 2015 (see 80 *Del. Laws*, c. 112 and 113), to submit a Regulatory Flexibility Analysis (RFA) and a Regulatory Impact Statement (RIS) with the proposed regulation to the Registrar of Regulations (see 29 *Del.C.* Ch. 104).

The Acts require the Office of Management and Budget (OMB) to adopt and publish guidelines to assist state agencies in preparing the statements required by the Acts. These guidelines have been prepared by OMB, the Department of State, and the Registrar of Regulations in consultation with the Department of Justice and a variety of regulatory agencies that issue state regulations.

The guidelines are intended to clarify the requirements contained in the Acts as well as provide state agencies with a specific form and general format for preparing and publishing the RFA and RIS. The form is also intended to benefit the small businesses and individuals impacted by proposed regulations by ensuring a reasonable level of consistency in the formatting of RFAs and RISs across different agencies and regulations.

Definitions

“**Small business**” means any not-for-profit enterprise, sheltered workshop, or business enterprise which is engaged in any phase of manufacturing, agricultural production or personal service, regardless of the form of its organization, when such enterprise or workshop employs fewer than 50 persons, has gross receipts of less than \$10,000,000 and is not owned, operated or controlled by another business enterprise.

To meet the definition of “small business” there are three components:

- 1) A not for profit enterprise, sheltered workshop, or business enterprise engaged in manufacturing, agricultural production, or personal service regardless of form of organization

AND

- 2) Employs fewer than 50 persons
Has gross receipts of less than \$10M

AND

- 3) Is not owned, operated, or controlled by another business enterprise (note: the owner controller entity is not limited by size or receipts)

“**Individual**” means any natural person, including any sole proprietorship. The term “individual” does not include any natural person affected by a regulation in his/her capacity as an officer, director, or employee of an organization that is not a “small business”; e.g. the CEO of a large business.

Exemptions

All proposed regulations, whether new or amended, must have an accompanying RFA and RIS to be published by the Registrar of Regulations as part of the notice of proposal, unless exempted. The General Assembly has provided exemptions from the requirement to prepare an RFA and RIS for certain types of regulations. If the agency, board, or commission is claiming an exemption, please still include the RFA and RIS form with the proposed regulation. To claim an exemption, complete the beginning contact information, and then check the appropriate reason why the exemption applies. If the agency, board, or commission is claiming an exemption, the remainder of the RFA and RIS form is not required to be completed.

Under the statute, there are two categories of exemptions:

- Exemption A: “This proposed regulation is not subject to Chapter 104, Title 29 of the Delaware Code, because it will not apply to small businesses or individuals at all.”

- Exemption B: "The agency, board, or commission is exempt from completing the RFA and Impact Statement due to the nature of the proposed regulation."

If the agency, board, or commission is claiming an exemption, then choose either Exemption A or Exemption B.

- Exemption A does not require further clarification.
- Exemption B requires further clarification.

It is possible for a proposed regulation to meet the conditions of both Exemption A and Exemption B. However, agencies are encouraged to check only A or B, not both.

- Exemption A: This proposed regulation is not subject to Chapter 104, Title 29 of the Delaware Code, because it will not apply to small businesses or individuals at all.

Discussion: If Exemption A is checked, then the agency is asserting that the proposed regulation does not apply to any persons that meet the definition of "small business" or "individuals". For example, a proposed regulation that applies to governmental entities only, and does not impact any small businesses or individuals would not be subject to the RFA or RIS section of the Delaware Code.

- Exemption B: The agency, board, or commission is exempt from completing the RFA and Impact Statement due to the nature of the proposed regulation.

Choose the reason for exemption:

Discussion: If Exemption B is checked, the agency must also further clarify the nature of the proposed regulation by choosing one exemption that best fits from the list of subgroup options that follows (B1, B2, B3, B4, or B5):

- B1. This proposed regulation is not substantially likely to impose additional costs or burdens upon individuals and/or small businesses. Explain this conclusion:

Discussion: If the B1 exemption is selected, the agency must explain how it arrived at the conclusion that the regulation is not likely to impose additional costs or burdens upon small businesses or individuals.

- B2. This is an emergency regulation pursuant to 29 Del.C. §10119.

Discussion: Emergency regulations are exempt, even if they affect small businesses or individuals. Such regulations must qualify as emergency regulations under the Administrative Procedures Act.

- B3. This proposed regulation is exempt from the procedural requirements of the Administrative Procedures Act, 29 Del.C. §10113(b). Choose which reason:

- B3a. Descriptions of agency organization, operations and procedures for obtaining information
- B3b. Rules of practice and procedure used by the agency
- B3c. Delegations of authority to subordinates
- B3d. Nonsubstantive changes in existing regulations to alter style or form or to correct technical errors
- B3e. Amendments to existing regulations to make them consistent with changes in basic law but which do not otherwise alter the substance of the regulations
- B3f. Codifications of existing agency or judicial principles of decision derived from previous decisions and rulings

Discussion: Certain regulations are exempt from the procedural requirements of the Administrative Procedures Act pursuant to 29 Del.C. §10113(b). An agency, board, or commission may determine that one or more of the exemptions set forth above apply. If the B3 exemption is chosen, the agency, board, or commission must select the statutory reason (B3a, B3b, B3c, etc.).

PROPOSED REGULATIONS

- B4. This proposed regulation defines standard of conduct or qualifications of individuals applying for licensure or as licensed professionals. Identify which professional license or professional qualification this would apply to:

Discussion: Regulations dealing solely with standards for the licensing of professionals are exempt. Standards and procedures for licensing and qualifications for various professions and occupations are found throughout the Delaware Code, and many are found in Title 24. It is important to note, that the *B4* exemption may not be claimed if a proposed regulation would affect a business in ways other than standards for professional licensing qualification or certification. In such case, the agency, board, or commission would be required to prepare an RFA and RIS specific to how the aspects of the regulation unrelated to standards of conduct and qualifications of individuals impacts such small businesses.

- B5. Regulations that are required by federal law and/or have already complied with the federal Regulatory Flexibility Act, 5 U.S.C. § 601 *et seq.* (If this is checked, the agency, board, or commission shall cite the federal law, regulation, directive, or guidance strictly mandating such state regulation and shall attach any applicable Federal RFA related to the regulation, if available. Attach the Federal RFA statement to this form, or provide the URL here: _____).

Discussion: Where a Federal RFA has been published related to a state regulation required by federal law, the agency, board, or commission may select this exemption, and no state RFA or RIS is required. Include the copy of the Federal RFA or provide a URL, for the purpose of informing the public and businesses as to where to find more information.

Where no Federal RFA has been published related to a regulation required by Federal law, and where considering whether the *B5* exemption may be used, it is important to distinguish between federally required *specific* regulation(s) or, a federal directive, that *may be eligible* for this exemption, versus general regulatory authority which *may not be eligible* for this exemption.

In the case of federally required specific regulations, agencies may receive guidance from their federal counterparts that a specific regulation or amendment to an existing regulation is required to be promulgated by the state agency, board, or commission to remain in compliance with the requirements of the federal program. **The agency, board, or commission may be given flexibility to alter the substance of the proposed regulation.** These regulations or amendments are exempt from the requirements of the RFA and RIS. If claiming this exemption, an agency, board, or commission should discuss and cite (if applicable) the specific federal requirement prompting the promulgation of the state regulation or amendment, and why this exemption should apply.

Other regulations may be promulgated pursuant to general regulatory authority authorized by the federal government, and promulgation of regulation by the state agency, board or commission is not mandatory. **State agencies, boards, and commissions are given substantial flexibility to compose and promulgate these regulations.** These regulations and any subsequent amendments are subject to the requirements of the RIS and RFA.

Regulatory Flexibility Analysis (RFA)

The RFA is intended to show the public how the state agency, board, or commission made its determination that a regulation might impact small businesses or individuals. The RFA is required when a proposed regulation is **substantially likely to impose additional costs or burdens** on small businesses and individual regulated parties.

Where such costs or burdens are anticipated, other alternatives should be considered, in terms of whether they are lawful, applicable, feasible, and desirable. The methods to consider are set forth below. In the response, explain the rationale and conclusions after the agency, board, or commission has considered each of these methods. In addition, address each method individually. It is important to consider methods that will accomplish the objectives of the proposed regulation while minimizing the adverse impact upon individuals and small businesses.

State agencies, boards, and commissions proposing to adopt or amend a regulation that is substantially likely to impose additional costs or burdens upon individuals and/or small businesses shall consider, where **applicable, lawful, feasible and desirable**, the following methods of reducing the additional costs and burdens of proposed

regulations on individuals and small businesses:

1. The establishment of less stringent compliance or reporting requirements;
2. The establishment of less stringent schedules or deadlines for compliance or reporting requirements;
3. The consolidation or simplification of compliance or reporting requirements;
4. The establishment of performance standards to replace design or operational standards required in the proposed regulation;
5. The exemption of certain individuals or small businesses from all or part of the requirements contained in the proposed regulation; and
6. Such other alternative regulatory methods that will accomplish the objectives of the proposed regulation while minimizing the adverse impact upon individuals and small businesses.

- Explain whether each of the above methods would be applicable, lawful, feasible, and desirable to reduce the costs or burdens of the proposed regulation:

1. _____

2. _____

3. _____

4. _____

5. _____

6. _____

If the above RFA section does not address each of the six methods and there is not an exemption that applies, explain why the agency, board, or commission decided it was not applicable, lawful, feasible, and desirable to complete the RFA section above.

Regulatory Impact Statements

Please answer the following questions as completely as possible.

Any agency, board, or commission that proposes to adopt or amend a regulation that is substantially likely to impose additional costs or burdens upon individuals and/or small businesses must submit the below regulatory impact statement.

Reference the statutory provision that allows for the adoption or amendment of the regulation and the statutory provisions that address the subject matter of the regulation. In addition, provide the URL to the specific section of the Delaware Code to allow the public easy access to view the provision.

PROPOSED REGULATIONS

- Statutory Citation:

- URL:

- Subject Matter Statutory Citation:

- URL:

Discussion: If referencing specific citations in Delaware Code, include the citation and provide a URL to the relevant section or chapter of the Code.

- Describe the purpose of the proposed regulation (what is the need for the proposed regulation?):

Discussion: Include rationale for the need and purpose for the regulation. The response can include text from the preamble of the proposed regulation.

- What are the anticipated benefits of the proposed regulation? (Describe the benefits that are expected to accrue as a result of the implemented regulation). Please quantify such benefits, as feasible:

Discussion: Explain any anticipated benefits, even if they are qualitative rather than quantitative (public health, public safety, security, etc.).

- Identify the types of individuals and/or small businesses that would be subject to compliance under the regulation:

Discussion: "Types of individuals and or small businesses" means explaining which types of businesses (e.g. dry cleaners, salons, construction companies, etc.) or individuals. Estimate the number of businesses or individuals if this is available (e.g., there are over 3500 licensed food establishments operating in the State of Delaware, therefore if a regulation that affects all food establishments is proposed, you can estimate that 3500 businesses are affected by such a change).

- Provide a **good-faith estimate** of the potential cost of compliance for individuals and/or small businesses, which at minimum shall include the projected reporting, recordkeeping, and other administrative costs required to comply with the proposed regulation:

Discussion: When estimating the cost of compliance for individuals and/or small businesses, absolute costs are not required; a **general estimate** or a **range of costs** will suffice. The intent of this question is not to define every possible cost, but rather to generally assess the types of costs, time, and materials that might be imposed on small businesses or individuals as a result of the implementation of the regulation. Questions the agency, board, or commission should ask when estimating the cost of compliance include:

- Does the regulation require **capital costs** (building costs, material costs, upgrades to property or structures, retrofitting of systems, etc.)?
- Does the regulation require additional **recurring** costs?
- Does the regulation require **paperwork** of any kind for the small business or individual? If so, is it ongoing reporting or one time? How long will the paperwork take (a general range of time)?

- Does the regulation require new or changed **record keeping** that will create new processes or change processes already in place for small businesses or individuals?
- Will the class of small businesses or individuals need to **hire an outside professional** to comply with the proposed regulation (such as an attorney, accountant, tax advisor, environmental consultant, engineering firm, etc.)? If an outside professional is needed, **how many hours** will they be needed to assist? Will retaining or hiring the outside professional be on an **ongoing basis**?
- Does the regulation require small businesses to purchase goods or services that are **unusual or not commercially reasonable**?
- Does the regulation require that small businesses exceed commercially reasonable **data storage and transmission standards**?

There are two options for completing the cost estimate section of the RIS:

Cost Estimate Option 1: free-text response.

The agency, board, or commission may choose to address this question via a free-text response. At a minimum, this response shall address the projected reporting, recordkeeping, and other administrative costs required to comply with the proposed regulation.

Cost Estimate Option 2: series of questions to guide the response along with a free-text response.

Cost Estimate Option 2:

- Use the following questions to guide the response. The free-text section is also required when electing this option (see #17 in the chart below).

	<u>Cost Estimate Option 2</u>	<u>Yes</u>	<u>No</u>	<u>Unknown</u>
1	<u>Is this regulation being proposed to implement a state or federal program that provides funds to Delaware?</u>			
2	<u>If this regulation is not implemented, will individuals, businesses, or programs lose federal funding?</u>			
3	<u>Does this regulation implement a plan that has already been approved by the federal government, after an opportunity for public comment?</u>			
4	<u>Does this regulation follow industry standards and best practices?</u>			
5	<u>Are there potential costs in not establishing these standards?</u>			
6	<u>Does the regulation require capital costs (building costs, material costs, upgrades to property or structures, retrofitting of systems, etc.)?</u>			
7	<u>Does the regulation require additional recurring costs on small businesses or individuals?</u>			
8	<u>Does the regulation impose additional administrative burden for a small business or individual?</u>			
8a	• <u>If answering yes to #8, is it ongoing reporting or one time? (Choose answer)</u>	<u>Ongoing</u>	<u>One Time</u>	<u>Unknown</u>
8b	• <u>If answering yes to #8, generally, how much administrative effort will be required to comply with the regulation?</u>	<u>Large Amount</u>	<u>Small Amount</u>	<u>Unknown</u>

PROPOSED REGULATIONS

9	Does the regulation require new or changed record keeping that will create new processes or change processes already in place for small businesses or individuals?			
10	Would a small businesses or individual be required to hire an outside professional to comply with the proposed regulation (such as an attorney, accountant, tax advisor, environmental consultant, engineering firm, etc.)?			
10a	<ul style="list-style-type: none"> • If answering yes to #10, estimate how many hours an outside professional may be needed to assist: _____ 	----	----	
10b	<ul style="list-style-type: none"> • If answering yes to #10, will a small business or individual be required to retain the services of the outside professional on an ongoing basis? 			
11	Does the regulation require small businesses to purchase goods or services that are unusual or not commercially reasonable?			
12	Does the regulation require that small businesses exceed commercially reasonable data storage and transmission standards?			
13	Will small businesses have to hire additional employees in order to comply with the proposed regulation?			
14	Does the regulation require small businesses to cooperate with audits, inspections, or other regulatory enforcement activities?			
15	Does the regulation have the effect of creating additional licenses, taxes and/or fees for small businesses?			
16	Does the regulation require small businesses to additional education to keep up to date with regulatory requirements?			
17	<p>Please further explain any additional costs or burdens, which at a minimum shall include the projected reporting, recordkeeping, and other administrative costs required to comply with the proposed regulation:</p> <p>_____</p> <p>_____</p> <p>_____</p> <p>_____</p> <p>_____</p> <p>_____</p>			

- Provide a description of any less intrusive or less costly alternative methods of achieving the purpose of the proposed regulation, and why these methods were not preferred to a regulation.

Discussion: This question is similar to the Regulatory Flexibility Analysis, where the agency, board, or commission

explained each alternative method and what the conclusions were after considering each method.

- Optional – estimate the amount of agency, board, or commission staff hours it took to prepare this RFA and RIS statement:

Discussion: This question is optional. If the agency, board, or commission chooses to estimate the amount of time it spent on preparing this statement, please include that information here.

Regulatory Flexibility Analysis and Impact Statement Form **For Proposed New and Amended Regulations Affecting Small Businesses or Individuals**

Introduction

Beginning January 1, 2016 agencies proposing new or amended regulations that affect small businesses or individuals are required, under the new Regulatory Transparency and Accountability Acts of 2015 (see 80 Del. Laws, c. 112 and 113), to submit a Regulatory Flexibility Analysis (RFA) and a Regulatory Impact Statement (RIS) with the proposed regulation to the Registrar of Regulations (see 29 Del.C. Ch. 104).

This RFA and RIS form is intended to benefit the small businesses and individuals impacted by proposed regulations by ensuring a reasonable level of consistency in the formatting of RFAs and RISs across different agencies and regulations.

State agencies proposing new or revised regulations that are substantially likely to impose additional costs or burdens on small businesses¹ or individuals² must submit a Regulatory Flexibility Analysis (RFA) **and** a Regulatory Impact Statement (RIS) to the Registrar of Regulations, with the proposed regulation.

What is a Regulatory Flexibility Analysis (RFA)?

In each RFA, an agency must consider, where applicable, lawful, feasible and desirable, specific methods of reducing the burdens of the regulation on individuals and/or small businesses, including: (1) establishing less stringent requirements and deadlines; (2) establishing performance standards to replace design standards; (3) exempting individuals and small businesses from all or part of the regulation; and (4) examining other ways to accomplish the regulation's purpose, while minimizing the impact upon individuals and/or small businesses.

What is a Regulatory Impact Statement (RIS)?

Among other things, each RIS must (1) describe the purpose of the regulation; (2) identify the individuals and/or small businesses subject to it; (3) provide an estimate of the potential costs of compliance; and (4) describe any less intrusive or less costly alternative methods of achieving the purpose of the regulation. In addition, the Act further enhances transparency by requiring the Registrar of Regulations to transmit regulatory impact statements to the appropriate standing committee of the General Assembly.

Agencies, Boards, and Commissions: please fill out this form when proposing new or amended regulations for the purpose of informing the public and business community. All proposed regulations, even if an exemption applies, must have this form attached when submitting to the Registrar of Regulations.

Date _____

-
1. "Small business" means any not-for-profit enterprise, sheltered workshop or business enterprise which is engaged in any phase of manufacturing, agricultural production or personal service, regardless of the form of its organization, when such enterprise or workshop employs fewer than 50 persons, has gross receipts of less than \$10,000,000 and is not owned, operated or controlled by another business enterprise.
 2. "Individual" means any natural person, including any sole proprietorship. The term "individual" does not include any natural person affected by a regulation in his/her capacity as an officer, director, or employee of an organization that is not a "small business": e.g. the CEO of a large business.

PROPOSED REGULATIONS

Agency _____

Division/Office _____

Contact Name _____

Contact Email (or mailing address for comments) _____

Exemptions

Exemption A: This proposed regulation is **not subject to Chapter 104, Title 29 of the Delaware Code**, because it will not apply to small businesses or individuals at all.

Exemption B: The agency, board, or commission is exempt from completing the RFA and Impact Statement due to the nature of the proposed regulation.

Choose the reason for exemption:

B1. This proposed regulation is not substantially likely to impose additional costs or burdens upon individuals and/or small businesses. Explain this conclusion:

B2. This is an emergency regulation pursuant to 29 **Del.C.** §10119.

B3. This proposed regulation is exempt from the procedural requirements of the Administrative Procedures Act, 29 **Del.C.** §10113(b). Choose which reason:

- *B3a.* Descriptions of agency organization, operations and procedures for obtaining information
- *B3b.* Rules of practice and procedure used by the agency
- *B3c.* Delegations of authority to subordinates
- *B3d.* Nonsubstantive changes in existing regulations to alter style or form or to correct technical errors
- *B3e.* Amendments to existing regulations to make them consistent with changes in basic law but which do not otherwise alter the substance of the regulations
- *B3f.* Codifications of existing agency or judicial principles of decision derived from previous decisions and rulings

B4. This proposed regulation defines standard of conduct or qualifications of individuals applying for licensure or as licensed professionals. Identify which professional license or professional qualification this would apply to:

B5. Regulations that are required by federal law and/or have already complied with the federal Regulatory Flexibility Act, 5 U.S.C. § 601 et seq. (If this is checked, the agency, board, or commission shall cite the federal law, regulation, directive, or guidance strictly mandating such state regulation and shall attach any applicable Federal RFA related to the regulation, if available. Attach the Federal RFA statement to this form, or provide the URL):

Regulatory Flexibility Analysis

State agencies, boards, and commissions proposing to adopt or amend a regulation that is substantially likely to impose additional costs or burdens upon individuals and/or small businesses shall consider, where **applicable, lawful, feasible and desirable**, the following methods of reducing the additional costs and burdens of proposed regulations **on individuals and small businesses**:

1. The establishment of less stringent compliance or reporting requirements;
2. The establishment of less stringent schedules or deadlines for compliance or reporting requirements;
3. The consolidation or simplification of compliance or reporting requirements;
4. The establishment of performance standards to replace design or operational standards required in the proposed regulation;
5. The exemption of certain individuals or small businesses from all or part of the requirements contained in the proposed regulation; and
6. Such other alternative regulatory methods that will accomplish the objectives of the proposed regulation while minimizing the adverse impact upon individuals and small businesses.

Explain whether each of the above methods would be applicable, lawful, feasible, and desirable to reduce the costs or burdens of the proposed regulation:

1. _____

2. _____

3. _____

4. _____

5. _____

6. _____

If the above RFA section does not address each of the six methods and there is not an exemption that applies, explain why the agency, board, or commission decided it was not applicable, lawful, feasible, and desirable to complete the RFA section above:

PROPOSED REGULATIONS

Regulatory Impact Statements

Any agency, board, or commission that proposes to adopt or amend a regulation that is substantially likely to impose additional costs or burdens upon individuals and/or small businesses must submit the below Regulatory Impact Statement (RIS).

- Reference the statutory provision that allows for the adoption or amendment of the regulation and the statutory provisions that address the subject matter of the regulation. In addition, provide the URL to the specific section of the Delaware Code to allow the public easy access to view the provision.

- Statutory Citation:

- URL:

- Subject Matter Statutory Citation:

- URL:

- Describe the purpose of the proposed regulation (what is the need for the proposed regulation?):

- What are the anticipated benefits of the proposed regulation? (Describe the benefits that are expected to accrue as a result of the implemented regulation). Please quantify such benefits, as feasible:

- Identify the types of individuals and/or small businesses that would be subject to compliance under the regulation:

- Provide a **good-faith estimate** of the potential cost of compliance for individuals and/or small businesses, which at minimum shall include the projected reporting, recordkeeping, and other administrative costs required to comply with the proposed regulation. Use the below space for a free-text response (*Cost Estimate Option 1*) or, use the questionnaire below to guide the response (*Cost Estimate Option 2*):

Cost Estimate Option 1:

	<u>Cost Estimate Option 2</u>	<u>Yes</u>	<u>No</u>	<u>Unknown</u>
1	Is this regulation being proposed to implement a state or federal program that provides funds to Delaware?			
2	If this regulation is not implemented, will individuals, businesses, or programs lose federal funding?			
3	Does this regulation implement a plan that has already been approved by the federal government, after an opportunity for public comment?			
4	Does this regulation follow industry standards and best practices?			
5	Are there potential costs in not establishing these standards?			
6	Does the regulation require capital costs (building costs, material costs, upgrades to property or structures, retrofitting of systems, etc.)?			
7	Does the regulation require additional recurring costs on small businesses or individuals?			
8	Does the regulation impose additional administrative burden for a small business or individual?			
8a	• If answering yes to #8, is it ongoing reporting or one time? (Choose answer)	<u>Ongoing</u>	<u>One Time</u>	<u>Unknown</u>
8b	• If answering yes to #8, generally, how much administrative effort will be required to comply with the regulation?	<u>Large Amount</u>	<u>Small Amount</u>	<u>Unknown</u>
9	Does the regulation require new or changed record keeping that will create new processes or change processes already in place for small businesses or individuals?			
10	Would a small businesses or individual be required to hire an outside professional to comply with the proposed regulation (such as an attorney, accountant, tax advisor, environmental consultant, engineering firm, etc.)?			
10a	• If answering yes to #10, estimate how many hours an outside professional may be needed to assist _____	----	----	
10b	• If answering yes to #10, will a small business or individual be required to retain the services of the outside professional on an ongoing basis?			
11	Does the regulation require small businesses to purchase goods or services that are unusual or not commercially reasonable?			

PROPOSED REGULATIONS

12	<u>Does the regulation require that small businesses exceed commercially reasonable data storage and transmission standards?</u>			
13	<u>Will small businesses have to hire additional employees in order to comply with the proposed regulation?</u>			
14	<u>Does the regulation require small businesses to cooperate with audits, inspections, or other regulatory enforcement activities?</u>			
15	<u>Does the regulation have the effect of creating additional licenses, taxes and/or fees for small businesses?</u>			
16	<u>Does the regulation require small businesses to additional education to keep up to date with regulatory requirements?</u>			
17	<u>Please further explain any additional costs or burdens, which at a minimum shall include the projected reporting, recordkeeping, and other administrative costs required to comply with the proposed regulation:</u> <hr style="border: 0; border-top: 1px solid black; margin: 2px 0;"/> <hr style="border: 0; border-top: 1px solid black; margin: 2px 0;"/> <hr style="border: 0; border-top: 1px solid black; margin: 2px 0;"/> <hr style="border: 0; border-top: 1px solid black; margin: 2px 0;"/> <hr style="border: 0; border-top: 1px solid black; margin: 2px 0;"/> <hr style="border: 0; border-top: 1px solid black; margin: 2px 0;"/>			

- Provide a description of any less intrusive or less costly alternative methods of achieving the purpose of the proposed regulation, and why these methods were not preferred to a regulation:

- (Optional) Estimate the amount of agency, board, or commission staff hours it took to prepare this RFA and RIS statement:

Symbol Key

Arial type indicates the text existing prior to the regulation being promulgated. Underlined text indicates new text added at the time of the proposed action. Language which is ~~stricken~~ through indicates text being deleted. **[Bracketed Bold language]** indicates text added at the time the final order was issued. ~~**[Bracketed bold stricken through]**~~ indicates language deleted at the time the final order was issued.

Final Regulations

The opportunity for public comment shall be held open for a minimum of 30 days after the proposal is published in the *Register of Regulations*. At the conclusion of all hearings and after receipt within the time allowed of all written materials, upon all the testimonial and written evidence and information submitted, together with summaries of the evidence and information by subordinates, the agency shall determine whether a regulation should be adopted, amended or repealed and shall issue its conclusion in an order which shall include: (1) A brief summary of the evidence and information submitted; (2) A brief summary of its findings of fact with respect to the evidence and information, except where a rule of procedure is being adopted or amended; (3) A decision to adopt, amend or repeal a regulation or to take no action and the decision shall be supported by its findings on the evidence and information received; (4) The exact text and citation of such regulation adopted, amended or repealed; (5) The effective date of the order; (6) Any other findings or conclusions required by the law under which the agency has authority to act; and (7) The signature of at least a quorum of the agency members.

The effective date of an order which adopts, amends or repeals a regulation shall be not less than 10 days from the date the order adopting, amending or repealing a regulation has been published in its final form in the *Register of Regulations*, unless such adoption, amendment or repeal qualifies as an emergency under §10119.

DEPARTMENT OF EDUCATION

OFFICE OF THE SECRETARY

Statutory Authority: 14 Delaware Code, Section 122(b) (14 **Del.C.** §122(b))
14 **DE Admin. Code** 505

REGULATORY IMPLEMENTING ORDER

505 High School Graduation Requirements and Diplomas

I. SUMMARY OF THE EVIDENCE AND INFORMATION SUBMITTED

The Secretary of Education seeks the consent of the State Board of Education to amend 14 **DE Admin. Code** 505 High School Graduation Requirements and Diplomas. This regulation is being amended to include language which specifically allows a district or charter school to award credit based on demonstration of mastery of a particular course. This language was proposed based on the Competency Based Learning Guiding Coalition that was facilitated by the Department of Education and that included Delaware educators. In addition an amendment was made in section 10.0 that expands the scope of students covered by this regulation. This section allows a student in DSCYF custody during their high school years to graduate from high school based on the State's graduation requirements if the district or charter school exceeds what is required by the State. With this amendment, those students in DSCYF custody within Youth Rehabilitation Services are included.

Notice of the proposed regulation was published in the *News Journal* and the *Delaware State News* on August 1, 2015, in the form hereto attached as Exhibit "A". Comments were received from the State Council for Persons with Disabilities and the Governor's Advisory Council for Exceptional Citizens related to (1) redundancy of code citation in §§10.1 and 10.2 as the code is already cited in the definition of "Student in DSCYF Custody." These sections were updated accordingly; (2) clarification requested in §8.1 to include the Education Unit of DSCYF per House Bill 116 of the 148th General Assembly as an entity that could award credits toward graduation. This section was updated as well; (3) requested removal of the code citation in the definition of "Student in DSCYF Custody" as it is underclusive. Because these comments indicate that there could be some confusion as to which students are

covered by this revised regulation and it is the intent of the Department to include all students who are actually in DSCYF custody, the statutory reference was removed, although not all of the commentators' suggested routes for DSCYF custody may actually result in DSCYF having custody.

II. FINDINGS OF FACTS

The Secretary finds that it is appropriate to amend 14 **DE Admin. Code** 505 High School Graduation Requirements and Diplomas in order to include language which specifically allows a district or charter school to award credit based on demonstration of mastery of a particular course. This language was proposed based on the Competency Based Learning Guiding Coalition that was facilitated by the Department of Education and that included Delaware educators. In addition an amendment was made in section 10.0 that expands the scope of students covered in this regulation. This section allows a student in DSCYF custody during their high school years to graduate from high school based on the State's graduation requirements if the district or charter school exceeds what is required by the State. With this amendment, those students in DSCYF custody within Youth Rehabilitation Services are included.

III. DECISION TO AMEND THE REGULATION

For the foregoing reasons, the Secretary concludes that it is appropriate to amend 14 **DE Admin. Code** 505 High School Graduation Requirements and Diplomas. Therefore, pursuant to 14 **Del.C.** §122, 14 **DE Admin. Code** 505 High School Graduation Requirements and Diplomas attached hereto as Exhibit "B" is hereby amended. Pursuant to the provision of 14 **Del.C.** §122(e), 14 **DE Admin. Code** 505 High School Graduation Requirements and Diplomas hereby amended shall be in effect for a period of five years from the effective date of this order as set forth in Section V. below.

IV. TEXT AND CITATION

The text of 14 **DE Admin. Code** 505 High School Graduation Requirements and Diplomas amended hereby shall be in the form attached hereto as Exhibit "B", and said regulation shall be cited as 14 **DE Admin. Code** 505 High School Graduation Requirements and Diplomas in the *Administrative Code of Regulations* for the Department of Education.

V. EFFECTIVE DATE OF ORDER

The actions hereinabove referred to were taken by the Secretary pursuant to 14 **Del.C.** §122 on September 17, 2015. The effective date of this Order shall be ten (10) days from the date this Order is published in the *Delaware Register of Regulations*.

IT IS SO ORDERED the 17th day of September 2015.

Department of Education

Mark T. Murphy, Secretary of Education

Approved this 17th day of September 2015

State Board of Education

Teri Quinn Gray, Ph.D., President

Jorge L. Melendez, Vice President

G. Patrick Heffernan

Barbara B. Rutt

Gregory B. Coverdale, Jr.

Terry M. Whittaker, Ed.D.

Nina Lou Bunting

505 High School Graduation Requirements and Diplomas

1.0 Definitions:

(Break in Continuity Within Section)

“**Student in DSCYF custody**” means a student, who is or was in the custody of the Department of Services for Children, Youth & Their Families (“DSCYF”), [~~pursuant to~~ Chapter 25 of Title 13 of the Delaware Code ~~10 Del.C., Chapter 9, §1009.~~] for any length of time, during his or her enrollment in high school.

(Break in Continuity of Sections)

8.0 Options for Awarding Credit Toward High School Graduation

- 8.1 District and charter school boards [~~and the Department of Services for Children, Youth and their Families (DSCYF) as provided in 29 Del.C. §9003(8),~~] are authorized to award credit toward high school graduation for the following activities, on the condition that the activities incorporate any applicable state content standards. Before awarding credit for any of the following activities, the districts and charter school boards shall have adopted a policy approving the activity for credit and establishing any specific conditions for the award of credit for the activity. Such policy shall be applicable to each school within the district or each charter high school.

(Break in Continuity of Sections)

10.0 Exceptions for Students in DSCYF Custody

- 10.1 A student in DSCYF custody [~~pursuant to 10 Del.C., Chapter 9, §1009~~] who transfers into a district or charter school shall be permitted to graduate based on the successful completion of the Department’s graduation requirements as defined in this regulation in lieu of the district’s or charter school’s specific requirements permitted by 7.1.
- 10.2 When a student in DSCYF custody [~~pursuant to 10 Del.C., Chapter 9, §1009~~] transfers into a district or charter school, the district or charter school shall use policies developed pursuant to Section 8.1 to review the student’s prior transcript and award values for credit earned through:

***Please note that no additional changes were made to the regulation as originally proposed and published in the August 2015 issue of the *Register* at page 100 (19 DE Reg. 100). Therefore, the final regulation is not being republished here in its entirety. A copy of the final regulation is available at:**

[505 High School Graduation Requirements and Diplomas](#)

OFFICE OF THE SECRETARY

Statutory Authority: 14 Delaware Code, Section 122(b) (14 Del.C. §122(b))
14 DE Admin. Code 545

REGULATORY IMPLEMENTING ORDER

545 K to 12 School Counseling Programs

I. SUMMARY OF THE EVIDENCE AND INFORMATION SUBMITTED

The Secretary of Education seeks the consent of the State Board of Education to amend 14 DE Admin. Code 545 K to 12 School Counseling Programs. This regulation is amended to update the language to align with the new edition of the American School Counselor Association (ASCA) National Model.

Notice of the proposed regulation was published in the *News Journal* and the *Delaware State News* on August 1, 2015 in the form hereto attached as Exhibit "A". Comments were received from the State Council for Persons with Disabilities and the Governor's Advisory Council for Exceptional Citizens, which noted that charter schools were not included in this regulation. The Department of Education notes that charter schools have documented

plans for addressing special needs, such as counseling, and such plans are updated every five years. The Department of Education does not believe it is necessary to change the regulation, as it would be redundant to require charter schools to create a separate school counseling plan given the detailed documentation (which addresses counseling as well as other issues) they are required to submit upon charter approval and during the application renewal process.

II. FINDINGS OF FACTS

The Secretary finds that it is appropriate to amend 14 **DE Admin. Code** 545 K to 12 School Counseling Programs in order to update the language to align with the new edition of the American School Counselor Association (ASCA) National Model.

III. DECISION TO AMEND THE REGULATION

For the foregoing reasons, the Secretary concludes that it is appropriate to amend 14 **DE Admin. Code** 545 K to 12 School Counseling Programs. Therefore, pursuant to 14 **Del.C.** §122, 14 **DE Admin. Code** 545 K to 12 School Counseling Programs attached hereto as Exhibit "B" is hereby amended. Pursuant to the provision of 14 **Del.C.** §122(e), 14 **DE Admin. Code** 545 K to 12 School Counseling Programs hereby amended shall be in effect for a period of five years from the effective date of this order as set forth in Section V. below.

IV. TEXT AND CITATION

The text of 14 **DE Admin. Code** 545 K to 12 School Counseling Programs amended hereby shall be in the form attached hereto as Exhibit "B", and said regulation shall be cited as 14 **DE Admin. Code** 545 K to 12 School Counseling Programs in the *Administrative Code of Regulations* for the Department of Education.

V. EFFECTIVE DATE OF ORDER

The actions hereinabove referred to were taken by the Secretary pursuant to 14 **Del.C.** §122 on September 17, 2015. The effective date of this Order shall be ten (10) days from the date this Order is published in the *Delaware Register of Regulations*.

IT IS SO ORDERED the 17th day of September 2015.

Department of Education

Mark T. Murphy, Secretary of Education

Approved this 17th day of September 2015

State Board of Education

Teri Quinn Gray, Ph.D., President

Jorge L. Melendez, Vice President

G. Patrick Heffernan

Barbara B. Rutt

Gregory B. Coverdale, Jr.

Terry M. Whittaker, Ed.D.

Nina Lou Bunting

***Please note that no changes were made to the regulation as originally proposed and published in the August 2015 issue of the *Register* at page 102 (19 DE Reg. 102). Therefore, the final regulation is not being republished. A copy of the final regulation is available at:**

545 K to 12 School Counseling Programs

OFFICE OF THE SECRETARY

Statutory Authority: 14 Delaware Code, Section 122(b) (14 **Del.C.** §122(b))
14 **DE Admin. Code** 1150

REGULATORY IMPLEMENTING ORDER

1150 School Transportation

I. SUMMARY OF THE EVIDENCE AND INFORMATION SUBMITTED

The Secretary of Education seeks the consent of the State Board of Education to amend 14 **DE Admin. Code** 1150 School Transportation. This regulation is being amended to clarify the requirements for school bus drivers and aides to receive four hours of in-service training each year and for aides to have annual physicals. These requirements are not effective unless the General Assembly appropriates funding for these purposes.

Notice of the proposed regulation was published in the *News Journal* and the *Delaware State News* on July 25, 2015 and August 1, 2015, in the form hereto attached as Exhibit "A". Comments were received from the State Council for Persons with Disabilities and the Governor's Advisory Council for Exceptional Citizens which suggested more informative language be used in §7.5, §8.2 and §8.1.5 instead of the current language of "pursuant to funding by the General Assembly." They suggested the language, "Consistent with the annual budget epilogue, the requirements in the subsection are suspended until fully funded by the General Assembly." The Department revised the existing language to read "This requirement shall be effective when the General Assembly appropriates funding for this purpose." The Department believes this language eliminates any potential confusion raised by the commentators.

II. FINDINGS OF FACTS

The Secretary finds that it is appropriate to amend 14 **DE Admin. Code** 1150 School Transportation in order to clarify the requirements for school bus drivers and aides to receive four hours of in-service training each year and for aides to have annual physicals. These requirements are not effective unless the General Assembly appropriates funding for these purposes.

III. DECISION TO AMEND THE REGULATION

For the foregoing reasons, the Secretary concludes that it is appropriate to amend 14 **DE Admin. Code** 1150 School Transportation. Therefore, pursuant to 14 **Del.C.** §122, 14 **DE Admin. Code** 1150 School Transportation attached hereto as Exhibit "B" is hereby amended. Pursuant to the provision of 14 **Del.C.** §122(e), 14 **DE Admin. Code** 1150 School Transportation hereby amended shall be in effect for a period of five years from the effective date of this order as set forth in Section V. below.

IV. TEXT AND CITATION

The text of 14 **DE Admin. Code** 1150 School Transportation amended hereby shall be in the form attached hereto as Exhibit "B", and said regulation shall be cited as 14 **DE Admin. Code** 1150 School Transportation in the *Administrative Code of Regulations* for the Department of Education.

V. EFFECTIVE DATE OF ORDER

The actions hereinabove referred to were taken by the Secretary pursuant to 14 **Del.C.** §122 on September 17, 2015. The effective date of this Order shall be ten (10) days from the date this Order is published in the *Delaware Register of Regulations*.

IT IS SO ORDERED the 17th day of September 2015.

Department of Education

Mark T. Murphy, Secretary of Education

Approved this 17th day of September 2015

State Board of Education

Teri Quinn Gray, Ph.D., President

Jorge L. Melendez, Vice President

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Barbara B. Rutt

Gregory B. Coverdale, Jr.

Terry M. Whittaker, Ed.D.

Nina Lou Bunting

**1150 School Transportation
(Break in Continuity of Sections)**

7.0 Qualifications and Responsibilities of School Bus Drivers

(Break in Continuity Within Section)

- 7.5 School bus drivers shall complete an annual District-provided in-service training program of at least four (4) hours during each fiscal year (July 1 to June 30) ~~beginning in fiscal year 2016. Those not completing an initial or annual in-service training program shall not be permitted to perform their duties in the following school year until completing a four (4) hour in-service training program. Based on funding available from the General Assembly, a stipend may be paid to each driver. This requirement shall be effective [pursuant to funding by the General Assembly when the General Assembly appropriates funding for this purpose].~~

(Break in Continuity Within Section)

8.0 Qualifications and Responsibilities of School Bus Aides

- 8.1 Qualifications for School Bus Aides include the following and shall apply to all new applicants and for any person whose employment as an aide has lapsed for a period of over one year. All requirements shall be met before serving as an aide on a school bus.

(Break in Continuity Within Section)

- 8.1.5 Complete an annual DOE physical for aides. New aides shall complete the physical satisfactorily before beginning their duties. ~~Current aides shall complete their physicals before January 1, 2016. Districts shall issue a DOE physical card to aides establishing valid completion of the DOE physical and aides shall carry it with them while on duty. This requirement shall be effective [pursuant to funding by the General Assembly when the General Assembly appropriates funding for this purpose].~~
- 8.1.6 Complete the school bus driver classroom training and other District required training programs satisfactorily.
- 8.2 School bus aides shall complete an annual District-provided in-service training program of at least 4 hours during each fiscal year (July 1 to June 30) ~~beginning in fiscal year 2016. Those not completing an initial or annual in-service training program shall not be permitted to perform their duties in the following school year until completing a 4-hour in-service training program. Based on funding available from the General Assembly, a stipend may be paid to each aide. This requirement shall be effective [pursuant to funding by the General Assembly when the General Assembly appropriates funding for this purpose].~~

(Break in Continuity Within Section)

*Please note that no additional changes were made to the regulation as originally proposed and published in the August 2015 issue of the *Register* at page 112 (19 DE Reg. 112). Therefore, the final regulation is not being republished here in its entirety. A copy of the final regulation is available at:

1150 School Transportation

DEPARTMENT OF HEALTH AND SOCIAL SERVICES DIVISION OF PUBLIC HEALTH

Statutory Authority: 16 Delaware Code, §122(1) & (3)d & j (16 Del.C. §122(1) & (3)d & j)
16 DE Admin. Code 4464

ORDER

4464 Public Swimming Pools

NATURE OF THE PROCEEDINGS:

Delaware Health and Social Services ("DHSS") initiated proceedings to adopt the State of Delaware Regulations Governing Public Pools (4464). The DHSS proceedings to adopt regulations were initiated pursuant to 29 Delaware Code Chapter 101 and authority as prescribed by 16 Delaware Code, §§122(3)(d).

On August 1, 2015 (Volume 19, Issue 2), DHSS published in the Delaware *Register of Regulations* its notice of proposed regulations, pursuant to 29 Delaware Code Section 10115. It requested that written materials and suggestions from the public concerning the proposed regulations be delivered to DHSS by September 8, 2015, or be presented at a public hearing on August 26, 2015, after which time the DHSS would review information, factual evidence and public comment to the said proposed regulations.

Written comments were received during the public comment period and evaluated. The results of that evaluation are summarized in the accompanying "Summary of Evidence."

SUMMARY OF EVIDENCE

In accordance with Delaware Law, public notices regarding proposed Department of Health and Social Services (DHSS) State of Delaware Regulations Governing Public Pools were published in the *Delaware State News*, the *News Journal* and the *Delaware Register of Regulations*.

Comments from Deric Clinton, YMCA of Delaware:

The first comment relates to Section 9.6.4.1. In that section, it refers to lifeguard certifications, which are recognized. One of them being Ellis and Associates National Pool and Waterpark Lifeguard Training. There is a new name to that curriculum now, which is Ellis and Associates International Lifeguard Training Program. I am recommending that be updated in the Code. My other is more of a clarity as it relates to Section 5.1.19.2. In that, it refers to a water fountain be available in every pool area at the shallow end of the pool. I'm wondering why specifically in the shallow end it would be required. Can it just be in the pool environment itself.

Program Response: The proposed regulations have been revised based on Mr. Clinton's Comments.

9.6.4.1 has been amended to read:

Current certification in National YMCA Lifeguarding, or American Red Cross Basic Lifeguarding, ~~Ellis & Associates National Pool & Waterpark Lifeguard Training~~ **Ellis and Associates International Lifeguard Training Program**, Aquatic Resource Service Associates Aquatic Rescue Training or approved equivalent.

5.1.19.2 has been amended to read:

The fountain shall be easily accessible and located inside the pool fence ~~or room at the shallow end~~.

Comments from Victor Mazzio, YMCA of Delaware:

To what degree are we expected to renovate and bring our older facilities, 16 some that are 50-years-old up to Code? Does every facility that does not meet, or not able to meet the new Code, does it require a variance application, and what is the process and time frame for that? So, that would cover like all our older pools and all of the water fountains on decks, foot washes and things in that regard.

Program Response: This is addressed by the language included in 16.1 of the Regulations:

No provisions of Sections of these Regulations shall be applied retroactively, or interpreted to require reconstruction, alteration or replacement of a pool, or any part of a pool, which has been approved by the Division and which has been installed or is under construction.

The public comment period was open from August 1, 2015 through September 8, 2015. Two parties provided comments on the regulations, resulting in minor technical changes.

Verifying documents are attached to the Hearing Officer's record. The regulation has been approved by the Delaware Attorney General's office and the Cabinet Secretary of DHSS.

FINDINGS OF FACT:

Minor technical changes were made to the proposed regulations based on the comments received. The Department finds that the proposed regulations, as set forth in the attached copy should be adopted in the best interest of the general public of the State of Delaware.

THEREFORE, IT IS ORDERED, that the proposed State of Delaware State of Delaware Regulations Governing Public Swimming Pools (4464) is adopted and shall become effective October 11, 2015, after publication of the final regulation in the Delaware *Register of Regulations*.

Rita M. Landgraf, Secretary

4464 Public Swimming Pools (Break in Continuity of Sections)

5.0 Operational Requirements

5.1 Requirements for the Premises

(Break in Continuity Within Section)

5.1.19 Drinking Fountain

(Break in Continuity Within Section)

5.1.19.2 The fountain shall be easily accessible and located inside the pool fence ~~or room at the shallow end~~.

(Break in Continuity of Sections)

9.0 Operation, Maintenance, General Sanitation, Personnel, Supervision And Safety

(Break in Continuity Within Section)

9.6 Lifeguard

(Break in Continuity Within Section)

9.6.4 No person shall serve as a lifeguard unless he or she meets all of the following training requirements and can produce the appropriate documentation upon request of the Division:

9.6.4.1 Current certification in National YMCA Lifeguarding, or American Red Cross Basic Lifeguarding, ~~Ellis & Associates National Pool & Waterpark Lifeguard Training~~ Ellis and Associates International Lifeguard Training Program], Aquatic Resource Service Associates Aquatic Rescue Training or approved equivalent.

(Break in Continuity of Sections)

*Please note that no additional changes were made to the regulation as originally proposed and published in the August 2015 issue of the *Register* at page 115 (19 DE Reg. 115). Therefore, the final regulation is not being republished here in its entirety. A copy of the final regulation is available at:

4464 Public Swimming Pools

DEPARTMENT OF NATURAL RESOURCES AND ENVIRONMENTAL CONTROL

DIVISION OF AIR QUALITY

Statutory Authority: 7 Delaware Code, Chapter 60; (7 **Del.C.**, Ch. 60)
7 **DE Admin. Code** 1138

Secretary's Order No. 2015-A-0035

1138 Emission Standards for Hazardous Air Pollutants for Source Categories

Date of Issuance: September 8, 2015

Effective Date of the Amendment: October 11, 2015

Under the authority vested in the Secretary of the Department of Natural Resources and Environmental Control ("Department" or "DNREC") pursuant to 7 **Del.C.** §§6006, 6010, the following findings of fact based on the record, reasons and conclusions are entered as an Order of the Secretary in the above-referenced regulatory proceeding.

Background, Procedural History and Findings of Fact

This Order relates to proposed regulation Amendments to 7 **DE Admin. Code** 1138, *Emission Standards for Hazardous Air Pollutants for Source Categories*, Section 6: *Chromium Electroplating and Anodizing Tanks*. The Department's Division of Air Quality ("DAQ") commenced the regulatory development process with Start Action Notice 2015-01 dated February 23, 2015. The Department published its initial proposed regulation Amendments in the July 1, 2015 Delaware *Register of Regulations*. The Department then held a public hearing on August 4, 2015. Consistent with 29 **Del.C.** §10118(a), the public hearing record remained open for public comment through August 19, 2015.

The purpose of this proposed regulatory promulgation is to adopt as final the aforementioned proposed Amendments to 7 **DE Admin. Code** 1138, *Emission Standards for Hazardous Air Pollutants for Source Categories*, Section 6: *Chromium Electroplating and Anodizing Tanks* ("Amendments"), in order to align Delaware's 7 **DE Admin. Code** 1138 with the recently added alternative testing methodology that the U.S. Environmental Protection Agency ("EPA") made to the federal chromium electroplating and anodizing standard (40 CFR Part 63 Subpart N) promulgated on February 27, 2014, and also to give owners or operators of Delaware's affected facilities and their testers the additional flexibility to use the EPA's newly approved testing alternative.

The Clean Air Act Amendments of 1990 stipulated a 2-phase rulemaking process that the EPA must use to protect the public health from exposure to hazardous air pollutants ("HAPs"). Consistent with this 2-phase process, the EPA adopted the Maximum Achievable Control Technology ("MACT") standard applicable to chromium electroplating and anodizing operations on January 25, 1995 as Subpart N in 40 CFR Part 63, and later amended the MACT standard requirements and by promulgating the residual risk requirements on September 19, 2012.

On September 1, 1999, the Department's Division of Air Quality ("DAQ") adopted by reference that federal MACT standard (40 CFR Part 63 Subpart N, hereinafter referred to as "Subpart N") into Section 6 of 7 **DE Admin. Code** 1138. Section 6, like Subpart N, applies to chromium electroplating and anodizing operations. Delaware requested the EPA to delegate authority to Delaware to implement and administer Section 6 in lieu of Subpart N on March 6, 2000 and the EPA delegated that authority effective December 3, 2001. Since that time, the EPA has made a number of minor revisions to said Subpart N. The EPA also promulgated a major revision on September 19, 2012, when the EPA completed their risk assessments and promulgated revisions to the Subpart N to (1) protect the public health "with an ample margin of safety"; and to (2) address changes to the startup, shutdown, and malfunction ("SSM") requirements as a result of *Sierra Club v. EPA*, 551 F.3d 1019 (District of Columbia Circuit, 2008), *cert. denied*, 130 S. Ct. 1735 (U.S. 2010).

Following each of the aforementioned revisions, Delaware has adopted the appropriate Federal changes into Section 6 in order to maintain consistency between the national requirements and the Section 6 requirements. The last such change was finalized on September 1, 2013, when Delaware adopted the residual risk and technology review changes that the EPA promulgated on September 19, 2012, as noted above.

On February 27, 2014, the EPA promulgated in a single action over 80 revisions to test methods and testing

regulations. The revisions included changes to nearly 60 test methods and 30 standards in 40 CFR Parts 51, 60, 61, and 63. In Part 63, the EPA added the South Coast Air Quality Management District Method 205.1 as an additional testing option for measuring total chromium to Subpart N. In order to maintain consistency between the national requirements and the Section 6 requirements, the Department is proposing to similarly add the option use of Method 205.1 to Section 6 of 7 **DE Admin. Code** 1138.

This proposed regulatory action would amend 7 **DE Admin. Code** 1138 by adding the option of using Method 205.1 to Section 6. There are currently two affected sources in Delaware: Standard Technologies (Marshallton), and Procino Plating (Blades). These two facilities are small businesses, and would benefit from the added testing flexibility. Because of the minimal regulatory impact that this revision poses, DAQ did not believe it necessary to conduct work group meetings or public workshops regarding this proposed promulgation. Alternatively, the Department reached out to both sources directly, and provided them with the all pertinent information on the simple addition and information on Method 205.1.

The aforementioned proposed Amendments were presented and thoroughly vetted by the Department at the public hearing on August 4, 2015. It should be noted that no members of the public attended the August 4, 2015 hearing, and no comment was received by the Department at any time during the course of this proposed promulgation. It should also be noted that all proper notification and noticing requirements concerning this matter were met by the Department. Proper notice of the hearing was provided as required by law.

The Department's presiding hearing officer, Lisa A. Vest, prepared a Hearing Officer's Report dated August 26, 2015 ("Report"). The Report documents the proper completion of the required regulatory amendment process, establishes the record, and recommends the adoption of the proposed Amendments as attached to the Report as Appendix "A".

Reasons and Conclusions

Based on the record developed by the Department's experts and established by the Hearing Officer's Report, I find that the proposed regulatory Amendments to 7 **DE Admin. Code** 1138, *Emission Standards for Hazardous Air Pollutants for Source Categories, Section 6: Chromium Electroplating and Anodizing Tanks*, are well-supported. Therefore, the recommendations of the Hearing Officer are hereby adopted, and I direct that the proposed regulatory Amendments be promulgated as final.

I find that the Department's experts in the Division of Air Quality fully developed the record to support adoption of these regulatory Amendments. The adoption of these regulatory Amendments will allow Delaware to maintain the consistency of Delaware's air regulatory requirements under Section 6 of 7 **DE Admin. Code** 1138 with the national requirements under 40 CFR Part 63, Subpart N, and also give owners or operators of Delaware's affected facilities and their testers the additional flexibility to use the EPA's newly approved testing alternative.

In conclusion, the following reasons and conclusions are entered:

1. The Department has the statutory basis and legal authority to act with regard to the proposed Amendments to 7 **DE Admin. Code** 1138, *Emission Standards for Hazardous Air Pollutants for Source Categories, Section 6: Chromium Electroplating and Anodizing Tanks*, pursuant to 7 **Del.C.** Ch. 60;
2. The Department has jurisdiction under its statutory authority, pursuant to 7 **Del.C.** Ch. 60, to issue an Order adopting these proposed regulatory amendments as final;
3. The Department provided adequate public notice of the proposed regulatory amendments and all proceedings in a manner required by the law and regulations, provided the public with an adequate opportunity to comment on the proposed regulatory amendments, including at the time of the public hearing held on August 4, 2015, and held the record open through close of business on August 19, 2015, consistent with 29 **Del.C.** §10118(a), in order to consider public comment on these proposed regulatory amendments before making any final decision;
4. The Department's Hearing Officer's Report, including its established record and the recommended proposed regulatory Amendments as set forth in Appendix "A", are hereby adopted to provide additional reasons and findings for this Order;
5. Promulgation of the proposed regulatory amendments to 7 **DE Admin. Code** 1138, *Emission Standards for Hazardous Air Pollutants for Source Categories, Section 6: Chromium Electroplating and Anodizing Tanks*, will enable the Department to (1) maintain the consistency of Delaware's air regulatory requirements under Section 6 of 7 **DE Admin. Code** 1138 with the national requirements

- under 40 CFR Part 63, Subpart N; and (2) to give owners or operators of Delaware's affected facilities and their testers the additional flexibility to use the EPA's newly approved testing alternative;
6. The Department has reviewed these proposed regulatory Amendments in the light of the Regulatory Flexibility Act, consistent with 29 **Del.C.** Ch. 104, and believes the same to be lawful, feasible and desirable, and that the recommendations as proposed should be applicable to all Delaware citizens equally;
 7. The Department's proposed regulatory Amendments, as published in the July 1, 2015 Delaware *Register of Regulations*, and as set forth in Appendix "A" as noted above, are adequately supported, are not arbitrary or capricious, and are consistent with the applicable laws and regulations. Consequently, they are approved as final regulatory amendments, which shall go into effect ten days after their publication in the next available issue of the Delaware *Register of Regulations*; and
 8. The Department shall submit this Order approving as final the proposed Amendments to 7 **DE Admin. Code** 1138, *Emission Standards for Hazardous Air Pollutants for Source Categories*, Section 6: *Chromium Electroplating and Anodizing Tanks* to the Delaware *Register of Regulations* for publication in its next available issue, and provide such other notice as the law and regulation require and the Department determines is appropriate.

David S. Small, Secretary

***Please note that no changes were made to the regulation as originally proposed and published in the July 2015 issue of the *Register* at page 23 (19 DE Reg. 23). Therefore, the final regulation is not being republished. A copy of the final regulation is available at:**

1138 Emission Standards for Hazardous Air Pollutants for Source Categories

DIVISION OF FISH AND WILDLIFE

Statutory Authority: 7 Delaware Code, Sections 901(c & d), 903(e)(3) & 903(h) (7 **Del.C.** §§901(c & d), 903(e)(3) & 903(h)
7 **DE Admin. Code** 3507

Secretary's Order No.: 2015-F-0037

3507 Black Sea Bass Size Limit; Trip Limits, Seasons; Quotas

Date of Issuance: September 15, 2015

Effective Date of the Amendment: October 11, 2015

Under the authority vested in the Secretary of the Department of Natural Resources and Environmental Control ("Department" or "DNREC") pursuant to 7 **Del.C.** §§6006, 6010, the following findings of fact based on the record, reasons and conclusions are entered as an Order of the Secretary in the above-referenced regulatory proceeding.

Background and Procedural History

This Order considers proposed regulations to amend 7 **DE Admin. Code** 3507, *Delaware Black Sea Bass: Size Limit, Trip Limits, Seasons, and Quotas*. The Department's Division of Fish and Wildlife commenced the regulatory development process with Start Action Notice 2015-05. The Department published its initial proposed regulation amendments in the August 1, 2015 Delaware *Register of Regulations*. The Department then held a public hearing on August 26, 2015. Consistent with 29 **Del.C.** §10118(a), the public hearing record remained open at that time for public comment through September 10, 2015.

The purpose of the Department's proposed promulgation is to adopt provisions consistent with federal measures for the recreational black sea bass fishery in compliance with Addendum XXV to the Atlantic States Marine Fisheries Commission's ("ASMFC") Interstate Fishery Management Plan for Summer Flounder, Scup, and

Black Sea Bass.

Black sea bass are managed cooperatively by the ASMFC, the Mid-Atlantic Fishery Management Council (“MAFMC”), and the National Oceanic and Atmospheric Administration (“NOAA”) Fisheries through the joint Summer Flounder, Scup, and Black Sea Bass Fishery Management Plan. The ASMFC and MAFMC jointly approved a coast-wide recreational black sea bass harvest limit (“Recreational Harvest Limit”, or “RHL”) for 2015 of 2.33 million pounds. Consistent with Addendum XXV, the ASMFC’s Summer Flounder, Scup, and Black Sea Bass Management Board approved the continuation of ad hoc regional management measures for 2015.

Addendum XXV to the Atlantic States Marine Fisheries Commission’s Fishery Management Plan for Summer Flounder, Scup, and Black Sea Bass requires the southern region states (Delaware to North Carolina) to implement recreational fishery management measures for black sea bass consistent with those measures required for federal waters. The MAFMC’s recommended federal recreational black sea bass measures for 2015 include a 12.5 inch minimum size limit, a 15 fish possession limit, and open seasons from May 15 through September 21, and October 22 through December 31. Effective June 19, 2015, NOAA Fisheries formally approved these measures. These measures, when combined with those being implemented in the northern region (Massachusetts through New Jersey), are expected to constrain recreational landings at or below the 2015 coast-wide RHL.

This action seeks to amend 7 **DE Admin. Code** 3507, *Delaware Black Sea Bass: Size Limit, Trip Limits, Seasons, and Quotas* by adopting provisions consistent with the aforementioned federal measures for the recreational black sea bass fishery in compliance with Addendum XXV to the ASMFC’s Interstate Fishery Management Plan for Summer Flounder, Scup, and Black Sea Bass, to wit: formally adopt open seasons for the black sea bass fishery of May 15 – September 21, and October 22 – December 31, and corresponding closed seasons of January 1 – May 14, and September 22 – October 21, as set forth previously in the Department’s emergency regulations adopted by Secretary Order Nos. 2015-F-0020 and 2015-F-0027, respectively.

The aforementioned proposed Amendments were presented and thoroughly vetted by the Department at the public hearing on August 26, 2015. No members of the public attended said public hearing, and no comments were received by the Department at any phase of this regulatory promulgation. Again, all proper notification and noticing requirements concerning this proposed promulgation were met by the Department in this matter. Proper notice of the hearing was provided as required by law.

The Department’s presiding hearing officer, Lisa A. Vest, prepared a Hearing Officer’s Report dated September 11, 2015 (“Report”). The Report documents the proper completion of the required regulatory amendment process, establishes the record, and recommends the adoption of the proposed Amendments as attached to the Report as Appendix “A”.

Reasons and Conclusions

Based on the record developed by the Department’s experts and established by the Hearing Officer’s Report, I find that the proposed regulatory Amendments to 7 **DE Admin. Code** 3507, *Delaware Black Sea Bass: Size Limit, Trip Limits, Seasons, and Quotas*, are well-supported. Therefore, the recommendations of the Hearing Officer are hereby adopted, and I direct that the proposed regulatory Amendments be promulgated as final.

I find that the Department’s experts in the Division of Fish and Wildlife fully developed the record to support adoption of these regulatory Amendments. The adoption of these regulatory Amendments will allow Delaware to (1) remain in compliance with the ASMFC’s Addendum XXV to the Fishery Management Plan for Summer Flounder, Scup and Black Sea Bass, to wit: [1] a 12.5 inch minimum size limit; [2] a 15 fish possession limit; and [3] open seasons from May 15 through September 21, and October 22 through December 31; (2) mirror its black sea bass management measures with those of surrounding states, as well as those likely to be in place in federal waters; and (3) adopt said measures that, when combined with those being implemented in the northern region (Massachusetts through New Jersey), are expected to constrain recreational landings at or below the 2015 coast-wide RHL.

In conclusion, the following reasons and conclusions are entered:

1. The Department has the statutory basis and legal authority to act with regard to the proposed Amendments to 7 **DE Admin. Code** 3507, *Delaware Black Sea Bass: Size Limit, Trip Limits, Seasons, and Quotas*, pursuant to 7 **Del.C.** §§901(c & d), 903(e)(3), and 903(h);
2. The Department has jurisdiction under its statutory authority, pursuant to 7 **Del.C.** Ch. 60, to issue an Order adopting these proposed regulatory Amendments as final;

3. The Department provided adequate public notice of the proposed regulatory Amendments and all proceedings in a manner required by the law and regulations, provided the public with an adequate opportunity to comment on said Amendments, including at the time of the public hearing held on August 26, 2015, and held the record open through close of business on September 10, 2015, consistent with 29 **Del.C.** §10118(a), in order to consider public comment on these proposed regulatory Amendments before making any final decision;
4. The Department's Hearing Officer's Report, including its established record and the recommended proposed regulatory Amendments as set forth in Appendix "A", are hereby adopted to provide additional reasons and findings for this Order;
5. The adoption of these proposed regulatory Amendments will allow Delaware to (1) remain in compliance with the ASMFC's Addendum XXV to the Fishery Management Plan for Summer Flounder, Scup and Black Sea Bass, to wit: [1] a 12.5 inch minimum size limit; [2] a 15 fish possession limit; and [3] open seasons from May 15 through September 21, and October 22 through December 31; (2) mirror its black sea bass management measures with those of surrounding states, as well as those likely to be in place in federal waters; and (3) adopt said measures that, when combined with those being implemented in the northern region (Massachusetts through New Jersey), are expected to constrain recreational landings at or below the 2015 coast-wide RHL;
6. The Department has reviewed these proposed regulatory Amendments in the light of the Regulatory Flexibility Act, consistent with 29 **Del.C.** Ch. 104, and believes the same to be lawful, feasible and desirable, and that the recommendations as proposed should be applicable to all Delaware citizens equally;
7. The Department's proposed regulatory amendments, as published in the August 1, 2015 Delaware *Register of Regulations*, and as set forth in Appendix "A" hereto, are adequately supported, are not arbitrary or capricious, and are consistent with the applicable laws and regulations. Consequently, they should be approved as final regulatory amendments, which shall go into effect ten days after their publication in the next available issue of the Delaware *Register of Regulations*; and
8. The Department shall submit this Order approving as final the proposed Amendments to 7 **DE Admin. Code** 3507, *Delaware Black Sea Bass: Size Limit, Trip Limits, Seasons, and Quotas* to the Delaware *Register of Regulations* for publication in its next available issue, and provide such other notice as the law and regulation require and the Department determines is appropriate.

David S. Small, Secretary

***Please note that no changes were made to the regulation as originally proposed and published in the August 2015 issue of the *Register* at page 121 (19 DE Reg. 121). Therefore, the final regulation is not being republished. A copy of the final regulation is available at:**

3507 Black Sea Bass Size Limit; Trip Limits, Seasons; Quotas

DIVISION OF FISH AND WILDLIFE

Statutory Authority: 7 Delaware Code, Sections 1902(a)(1); 2804; 2806
(7 **Del.C.** §§1902(a)(1); 2804; 2806)
7 **DE Admin. Code** 3710, 3711 & 3712

Secretary's Order No. 2015-F-0032

3710 Conch

Date of Issuance: September 8, 2015
Effective Date of the Amendment: October 11, 2015

Under the authority vested in the Secretary of the Department of Natural Resources and Environmental Control

("Department" or "DNREC") pursuant to 7 **Del.C.** §§6006, 6010, the following findings of fact based on the record, reasons and conclusions are entered as an Order of the Secretary in the above-referenced regulatory proceeding.

Background, Procedural History and Findings of Fact

This Order relates to proposed regulation Amendments to 7 **DE Admin. Code** 3710-12, as follows, to wit: 7 **DE Admin. Code** 3710: *Conch*; 7 **DE Admin. Code** 3711: *Conch Minimum Size Limits*; and replacing existing 7 **DE Admin. Code** 3712: *Commercial Conch Dredge Licenses* with a new Section 3712, to wit: *Commercial Conch Season* (hereinafter referred to as "*Conch Regulations*"). The Department's Division of Fish and Wildlife commenced the regulatory development process with Start Action Notice 2015-02 dated April 14, 2015. The Department published its initial proposed regulation Amendments in the May 1, 2015 Delaware *Register of Regulations*. The Department then held a public hearing on May 28, 2015. Consistent with 29 **Del.C.** §10118(a), the public hearing record remained open for public comment through June 12, 2015.

The purpose of this proposed regulatory promulgation is to adopt as final the aforementioned proposed Amendments to Delaware's existing *Conch Regulations* ("Amendments") in order to provide Delaware's licensed knobbed conch (*Busycon carica*) dredgers with access to this resource similar to that of their New Jersey counterparts.

The Department received a request from the commercial shellfishing sector to align Delaware's knobbed conch management measures with those measures presently in place in the State of New Jersey. New Jersey's conch dredge landings are an authorized by-catch of their blue crab dredge fishery. The New Jersey conch fishery is constrained by a five-inch minimum size limit with a five month season from November 15 through April 15, and a cap of 93 dredge licenses. Delaware's directed knobbed conch fishery is presently constrained by a six-inch minimum size limit (3.5 inch minimum whorl diameter) with no closed season and delayed entry to the fishery. The lower minimum size limit in New Jersey poses a potential economic disadvantage to Delaware conch harvesters fishing the shared waterbody of Delaware Bay.

The Department agrees that parity with New Jersey's management measures is desirable; however, complete alignment (i.e., season dates and license cap) with the New Jersey by-catch fishery does not serve the best interest of Delaware's directed conch dredge fishery. Therefore, the Department proposes to adopt a five-inch minimum size limit (3-inch minimum whorl diameter) with a five-month open season from January 15 through June 15. The proposed minimum size limit will provide economic parity with New Jersey, and the implementation of a five month harvest season is expected to constrain harvest without unduly jeopardizing the sustainability of the resource. The number of active licenses in the Delaware conch dredge fishery (17 in 2014) does not warrant additional licensing restrictions at this time.

The aforementioned proposed Amendments were presented and thoroughly vetted by the Department at the public hearing on May 28, 2015. Members of the public attended said hearing, and asked clarifying questions with regard to this proposed regulatory promulgation, which were thoroughly addressed by Department staff at that time. It should also be noted that all proper notification and noticing requirements concerning this matter were met by the Department. Proper notice of the hearing was provided as required by law.

The Department's presiding hearing officer, Lisa A. Vest, prepared a Hearing Officer's Report dated August 24, 2015 ("Report"). The Report documents the proper completion of the required regulatory amendment process, establishes the record, and recommends the adoption of the proposed Amendments as attached to the Report as Appendix "A".

Reasons and Conclusions

Based on the record developed by the Department's experts and established by the Hearing Officer's Report, I find that the proposed regulatory Amendments to 7 **DE Admin. Code** 3710-12: *Conch Regulations* are well-supported. Therefore, the recommendations of the Hearing Officer are hereby adopted, and I direct that the proposed regulatory Amendments be promulgated as final.

I find that the Department's experts in the Division of Fish and Wildlife fully developed the record to support adoption of these regulatory Amendments. The adoption of these regulatory Amendments will allow Delaware to (1) provide Delaware's licensed knobbed conch (*Busycon carica*) dredgers with access to this resource similar to that of their New Jersey counterparts; (2) adopt a five-inch minimum size limit (3-inch minimum whorl diameter) with a five-month open season from January 15 through June 15; and (3) afford Delaware economic parity with

New Jersey by the implementation of said five month harvest season, which is expected to constrain harvest without unduly jeopardizing the sustainability of the resource.

In conclusion, the following reasons and conclusions are entered:

1. The Department has the statutory basis and legal authority to act with regard to the proposed Amendments to 7 **DE Admin. Code** 3710-12, pursuant to 7 **Del.C.** §§1902(a)(1), 2804, and 2806;
2. The Department has jurisdiction under its statutory authority, pursuant to 7 **Del.C.** Ch. 60, to issue an Order adopting these proposed regulatory Amendments as final;
3. The Department provided adequate public notice of the proposed regulatory Amendments and all proceedings in manner required by the law and regulations, provided the public with an adequate opportunity to comment on said Amendments, including at the time of the public hearing held on May 28, 2015, and held the record open through close of business on June 12, 2015, consistent with 29 **Del.C.** §10118(a), in order to consider public comment on these proposed regulatory Amendments before making any final decision;
4. The Department's Hearing Officer's Report, including its established record and the recommended proposed regulatory Amendments as set forth in Appendix "A", are hereby adopted to provide additional reasons and findings for this Order;
5. The adoption of these proposed regulatory Amendments will allow Delaware to (1) provide Delaware's licensed knobbed conch (*Busycon carica*) dredgers with access to this resource similar to that of their New Jersey counterparts; (2) adopt a five-inch minimum size limit (3-inch minimum whorl diameter) with a five-month open season from January 15 through June 15; and (3) afford Delaware economic parity with New Jersey by the implementation of said five month harvest season, which is expected to constrain harvest without unduly jeopardizing the sustainability of the resource;
6. The Department has reviewed these proposed regulatory Amendments in the light of the Regulatory Flexibility Act, consistent with 29 **Del.C.** Ch. 104, and believes the same to be lawful, feasible and desirable, and that the recommendations as proposed should be applicable to all Delaware citizens equally;
7. The Department's proposed regulatory Amendments, as published in the May 1, 2015 Delaware *Register of Regulations*, are adequately supported, are not arbitrary or capricious, and are consistent with the applicable laws and regulations. Consequently, they are approved as final regulatory amendments, which shall go into effect ten days after their publication in the next available issue of the Delaware *Register of Regulations*; and
8. The Department shall submit this Order approving as final the proposed Amendments to 7 **DE Admin. Code** 3710-12: *Conch Regulations* to the Delaware *Register of Regulations* for publication in its next available issue, and provide such other notice as the law and regulation require and the Department determines is appropriate.

David S. Small, Secretary

***Please note that no changes were made to the regulation as originally proposed and published in the May 2015 issue of the *Register* at page 844 (18 DE Reg. 844). Therefore, the final regulation is not being republished. A copy of the final regulation is available at:**

3710 Conch

FINAL REGULATIONS

DEPARTMENT OF SAFETY AND HOMELAND SECURITY

DIVISION OF STATE POLICE

5500 BAIL ENFORCEMENT AGENTS

Statutory Authority: 24 Delaware Code, Section 5504(a) (24 **Del.C.** §5504(a))
24 **DE Admin. Code** 5500

ORDER

5500 Bail Enforcement Agents

Pursuant to the Guidelines in 29 **Del.C.** §10118(a)(1)-(7), the Board of Examiners of Bail Enforcement Agents ("Board") hereby issues this Order. Following notice and a public hearing on the proposed adoption of amendments to:

- Rule 1.0 - Licensing;
- Rule 4.0 – Firearms Policy, and
- Rule 6.0 – Training Requirements for Issuance of a License,

the Board makes the following Findings and Conclusions:

Summary of Evidence and Information Submitted

1. The Board did not receive written evidence or information pertaining to the proposed adoption.
2. The Board expressed its desire to adopt the amendment to:
 - clarify the requirements for new and renewal licensing;
 - clarify the requirements to become firearms certified, and
 - clarify the initial training requirements and remove those no longer required.

Findings of Fact

3. The public was given notice and the opportunity to provide the Board with comments, in writing and by oral testimony, on proposed amendments. The written comments and oral testimony received are described in paragraph 1.
4. The Board finds that the adoption of this rule will:
 - clarify the requirements for new and renewal licensing;
 - clarify the requirements to become firearms certified, and
 - clarify the initial training requirements and remove those no longer required.
5. The Board finds that the adoption will have no adverse impact on the public.
6. The Board finds that the amendment is well written and describes its intent to adopt the rule to:
 - clarify the requirements for new and renewal licensing;
 - clarify the requirements to become firearms certified, and
 - clarify the initial training requirements and remove those no longer required.

Conclusion

7. The proposed rule adoption was published by the Board in accord with the statutory duties and authority as set forth in 24 **Del.C.** §5503 et seq. and, in particular, 24 **Del.C.** §5503(d)(2).
8. The Board deems this adoption necessary and expedient to the full and official performance of its duties under 24 **Del.C.** §5503 et. seq.
9. The Board concludes that the adoption of this rule will be in the best interests of the citizens of the State of Delaware.
10. The Board therefore adopts the amendment pursuant to 24 **Del.C.** §5503(d)(2) and guidelines of 29 **Del.C.** §10118 of the Administrative Procedures Act. See, Strauss v. Silverman, Del. Supr., 399 A.2d 192 (1979).
11. These adopted rules replace in their entirety any former rules or regulations heretofore promulgated by the Board.
12. The effective date of this Order shall be October 11, 2015.

13. Attached hereto and incorporated herein this order is the amended rule marked as exhibit A and executed simultaneously on the 28th day of August 2015.

BOARD OF EXAMINERS OF BAIL ENFORCEMENT AGENTS:

Major Melissa A. Zebley, Chairman

Mr. R. Dale Hamilton

John Yeomans, Director

Mr. Harry O. Jennings

Rebecca L. Byrd, Esquire

Mr. Kevin C. Jones (absent)

Ms. Robin David

Mr. Jack McGhee, II (absent)

Mr. Michael J. Dellose

***Please note that no changes were made to the regulation as originally proposed and published in the June 2015 issue of the *Register* at page 955 (18 DE Reg. 955). Therefore, the final regulation is not being republished. A copy of the final regulation is available at:**

5500 Bail Enforcement Agents

DEPARTMENT OF STATE

DIVISION OF PROFESSIONAL REGULATION

3500 BOARD OF EXAMINERS OF PSYCHOLOGISTS

Statutory Authority: 24 Delaware Code, Section 3506(a)(1) (24 **Del.C.** §3506(a)(1))
24 **DE Admin. Code** 3500

ORDER

3500 Board of Examiners of Psychologists

Pursuant to 29 **Del.C.** §10113(b)(5) and 24 **Del.C.** §3506(a)(1), the Delaware Board of Examiners of Psychologists issues this Order adopting the below amendments to the Board's regulations. Specifically, pursuant to 29 **Del.C.** §10113(b)(5), Regulations 6.1.1 and 7.1 of the Board of Examiners of Psychologists must be changed to make it consistent with newly adopted statutory changes in Title 24, Chapter 35 of the Delaware Code. These changes do not otherwise alter the substance of the regulations. In addition, Regulation 9.6 must be changed in order to correct a technical error pursuant to 29 **Del.C.** §10113(b)(4), as the term "relicensure" in an incorrect description of the process of renewal.

SUMMARY OF THE EVIDENCE

1. Rule 6.1.1 now states: "Programs that are accredited by the American Psychological Association are recognized as meeting the definition of a professional psychology program. The criteria for accreditation serves as a model for professional psychology training."

2. The Board makes the following change to this regulation (additions are underlined, removals are stricken through):

6.1.1.1 Programs that are accredited by the American Psychological Association and Psychological Clinical Science Accreditation System are recognized as meeting the definition of a professional psychology program. The criteria for accreditation serve as a model for professional psychology training.

3. Rule 7.1 now states:

7.1 Predoctoral internship supervision as required by doctoral programs in psychology. The predoctoral internship consists of a minimum of 1,500 hours of actual work experience completed in not less than 48 weeks, nor more than 104 weeks. At least 50% of the predoctoral supervised experience must be in clinical services such as treatment, consultation, assessment, and report writing, with at least 25% of that time devoted to face-to-face direct patient/client contact. No more than 25% of time shall be allocated for research.

4. The Board makes the following change to this regulation (additions are underlined, removals are stricken through):

7.1 Predoctoral internship supervision ~~as~~ is required by doctoral programs in psychology. The predoctoral internship consists of a minimum of 1,500 hours of actual work experience completed in not less than 48 weeks, nor more than 104 weeks. At least 50% of the predoctoral supervised experience must be in clinical services such as treatment, consultation, assessment, and report writing, with at least 25% of that time devoted to face-to-face direct patient/client contact. No more than 25% of time shall be allocated for research.

5. Board Rule 9.6 now states:

9.6 Supervision of the psychological assistant by the Delaware licensed psychologist is to be a regular and formal process. It is required that the licensed psychologist and the psychological assistant have weekly one-on-one, face-to-face supervision with review of each case served by the psychological assistant. The supervising psychologist must be familiar with each patient/ client seen by the psychological assistant and with the ongoing progress of treatment. One hour of supervision for every ten hours, or fraction thereof, of direct clinical work by the psychological assistant is required as a minimum. For example, if a psychological assistant provides eight (8) hours of direct clinical service, he or she must receive a minimum of one (1) hour of supervision. Likewise, a psychological assistant, who has fifteen (15) hours of direct clinical contact, must receive at least two (2) hours of supervision. This supervision must be documented in writing on patient records. In addition, the supervising psychologist shall submit at the time of relicensure and at the termination of the supervision relationship a supervision report on a form provided by the Board which will become a part of the public record. It will contain information describing the date and amount of supervision and any unscheduled supervisory contact, as well as a brief assessment of the psychological assistant's functioning.

6. The Board makes the following change to this regulation (additions are underlined, removals are stricken through):

9.6 Supervision of the psychological assistant by the Delaware licensed psychologist is to be a regular and formal process. It is required that the licensed psychologist and the psychological assistant have weekly one-on-one, face-to-face supervision with review of each case served by the psychological assistant. The supervising psychologist must be familiar with each patient/ client seen by the psychological assistant and with the ongoing progress of treatment. One hour of supervision for every ten hours, or fraction thereof, of direct clinical work by the psychological assistant is required as a minimum. For example, if a psychological assistant provides eight (8) hours of direct clinical service, he or she must receive a minimum of one (1) hour of supervision. Likewise, a psychological assistant, who has fifteen (15) hours of direct clinical contact, must receive at least two (2) hours of supervision. This supervision must be documented in writing on patient records. In addition, the supervising psychologist shall submit at the time of ~~relicensure~~ renewal and at the termination of the supervision relationship a supervision report on a form provided by the Board which will become a part of the public record. It will contain information describing the date and amount of supervision and any unscheduled supervisory contact, as well as a brief assessment of the psychological assistant's functioning.

7. The effective date of this Order will be ten (10) days from the publication of this Order in the *Register of Regulations* on October 1, 2015.

SO ORDERED this 14th day of September, 2015.

BY THE DELAWARE BOARD OF EXAMINERS OF PSYCHOLOGISTS

Dr. Joseph Zingaro, President

Rachel Dunning

Dr. Rachel A. Brandenburg, Vice President

Victor Kennedy, Public Member, Secretary

Ronise Ball, Public Member

Dr. Meghan Lines (absent)

Dr. Richard Brokaw

Dr. Kristen Robust

Heather Contant, Public Member

**3500 Board of Examiners of Psychologists
(Break in Continuity of Sections)**

6.0 Evaluation of Credentials

6.1 Candidates for licensure as psychologists in the State of Delaware shall:

6.1.1 Have received a doctoral degree based on a program of studies which is psychological in content and specifically designed to train and prepare psychologists. The doctoral degree must be from a

college or university, accredited as required by 24 Del.C. §3508(a)(1) having a graduate program which states its purpose to be the training and preparation of psychologists Graduates of non-United States (U.S.) degree programs will be required to have their credentials evaluated by a credential evaluation service approved by the National Association of Credential Evaluation Services, to determine equivalency to the accreditation requirements of §3508(a)(1) and equivalency of psychological content and training. The Board will consider programs to be psychological in content by the criteria established by the joint designation project of the Association of State and Provincial Psychology Boards and the Council for the National Register of Health Service Providers in Psychology, as follows:

- 6.1.1.1 Programs that are accredited by the American Psychological Association and Psychological Clinical Science Accreditation System are recognized as meeting the definition of a professional psychology program. The criteria for accreditation serves as a model for professional psychology training.

(Break in Continuity Within Section)

7.0 Supervised Experience

The types of supervision pertinent to licensure as a psychologist or registration as a psychological assistant are comprised of three types of supervisory experiences:

- 7.1 Predoctoral internship supervision as ~~is~~ required by doctoral programs in psychology. The predoctoral internship consists of a minimum of 1,500 hours of actual work experience completed in not less than 48 weeks, nor more than 104 weeks. At least 50% of the predoctoral supervised experience must be in clinical services such as treatment, consultation, assessment, and report writing, with at least 25% of that time devoted to face-to-face direct patient/client contact. No more than 25% of time shall be allocated for research.

(Break in Continuity of Sections)

9.0 Psychological Assistants

(Break in Continuity Within Section)

- 9.6 Supervision of the psychological assistant by the Delaware licensed psychologist is to be a regular and formal process. It is required that the licensed psychologist and the psychological assistant have weekly one-on-one, face-to-face supervision with review of each case served by the psychological assistant. The supervising psychologist must be familiar with each patient/ client seen by the psychological assistant and with the ongoing progress of treatment. One hour of supervision for every ten hours, or fraction thereof, of direct clinical work by the psychological assistant is required as a minimum. For example, if a psychological assistant provides eight (8) hours of direct clinical service, he or she must receive a minimum of one (1) hour of supervision. Likewise, a psychological assistant, who has fifteen (15) hours of direct clinical contact, must receive at least two (2) hours of supervision. This supervision must be documented in writing on patient records. In addition, the supervising psychologist shall submit at the time of ~~relicensure~~ renewal and at the termination of the supervision relationship a supervision report on a form provided by the Board which will become a part of the public record. It will contain information describing the date and amount of supervision and any unscheduled supervisory contact, as well as a brief assessment of the psychological assistant's functioning.

(Break in Continuity of Sections)

***Please Note: As the rest of the sections were not amended they are not being published. A copy of the regulation is available at:**

3500 Board of Examiners of Psychologists

FINAL REGULATIONS

DEPARTMENT OF TRANSPORTATION DIVISION OF PLANNING AND POLICY

Statutory Authority: 17 Delaware Code, Sections 132(e), 507, 508 and 29 Delaware Code, Section 8404(8) (17 **Del.C.** §§132(e), 507 & 508; 29 **Del.C.** §8404(8))
2 **DE Admin. Code** 2309

ORDER

2309 Development Coordination Manual

Pursuant to the authority provided by 17 **Del.C.** §§132(e), 507, and 508, as well as 21 **Del.C.** §8404(8), the Delaware Department of Transportation (DelDOT), adopted the Development Coordination Manual. The Department issues this Order adopting revisions to the Development Coordination Manual without prior publication pursuant to 29 **Del.C.** §10113(b)(1).

The Department is revising the Development Coordination Manual to address changes to the policies and procedures regarding the payment of fees. These procedural changes authorize additional methods of fee payment and bring the established operations and procedures for obtaining payments into alignment with modern financial practices.

SUMMARY OF THE EVIDENCE AND INFORMATION SUBMITTED

The current regulations were enacted in March of 2015 and were amended in July of 2015. The proposed revisions address sections of the preamble to the regulations in the "Preface" of the manual that are related to fee payments for transportation improvements and reviews associated with plan submittals as well as proposed regulations that address procedural changes in the way DelDOT does business including operations and procedures for obtaining payments. The changes take into account the issues and concerns identified as needing amendment to bring payment collections procedures into alignment with modern financial practices, and allow for additional methods of fee payment. A listing of changes made as part of this revision is included in the attached table.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

1. DelDOT has developed revised procedures for the collection of fees and methods of accepting payments. These regulations are in substantial compliance with and necessary to, effectuate modern financial practices, and provide reasonable services to the public. The regulations reflect these procedures.

2. The proposed revisions are useful and proper and DelDOT believes that the adoption of these revisions is appropriate.

DECISION AND ORDER CONCERNING THE REGULATIONS

NOW THEREFORE, under the above-described statutory authority, and for the reasons set forth above, the Secretary of the Delaware Department of Transportation does hereby ORDER that these revisions to the Development Coordination Manual be adopted and promulgated as set forth below.

The effective date of this Order is ten (10) days from the date of its publication in the Delaware *Register of Regulations*, in accordance with 29 **Del.C.** §10118(g).

IT IS SO ORDERED this 15th day of September, 2015.

Jennifer Cohan, Secretary
Delaware Department of Transportation

Existing Development Coordination Manual Regulations can be found in the DE Administrative Code at:

<http://regulations.delaware.gov/AdminCode/title2/2000/2300/2309.shtml#TopOfPage>

Summary of Changes to the Preface of the Development Coordination Manual

(due to the size of the actual regulations, the affected chapter is available in its entirety at the link provided in this posting)

Sec/Fig	Para.	DeIDOT Comment/Proposed Change	Justification
P.5.B	-	Add clarifying language regarding submittal of Fee Form content: "An "Initial Stage Fee Calculation Form" <u>or digital equivalent</u> must be submitted with the fee . . ."	Allows for users to provide digital copies of actual forms or complete on-line equivalent with respect to meeting DCM requirements.
P.5.C	-	Add clarifying language regarding submittal of Fee Form content: "A "Construction Stage Fee Calculation Form" <u>or digital equivalent</u> must be submitted with the fee . . ."	Allows for users to provide digital copies of actual forms or complete on-line equivalent with respect to meeting DCM requirements.
P.5	2 (Page P-7)	Add clarifying language regarding submittal of fees: "All fees shall be <u>paid using the methods described in Appendix C and in accordance with DeIDOT's current policies. Payments submitted to DeIDOT must be accompanied by the appropriate fee calculation form (or the digital equivalent), which can be found on DeIDOT's website under Development Coordination at the following link: http://devcoord.deldot.gov."</u>	Implements revised procedures and authorizes additional methods of fee payment, shifting the stated operational method of payment away from paper checks and paper submittals.
P.5	3 (Page P-7)	Add clarifying language regarding submittal of fees: " <u>If DeIDOT determines that a check or money order is the necessary form of payment for a particular project related fee, the check or money order shall be payable to the Delaware Department of Transportation. Checks submitted to DeIDOT must be accompanied by the appropriate fee form, which can be found on DeIDOT's website under the Subdivisions tab at the following link: http://deldot.gov/information/business/. Checks or money orders that are submitted requested by DeIDOT must be dated within 90 days of the submittal date submitted, to DeIDOT. All bank checks or money orders, and must include the applicable fee forms, and shall be mailed to DeIDOT at the following address:"</u>	Implements revised procedures and clarifies the operational requirements when DeIDOT authorizes paper checks as the required method of payment.

Summary of Changes to the Preface of the Development Coordination Manual (Continued)			
Sec/Fig	Para.	DeIDOT Comment/Proposed Change	Justification
P.5	4 (Page P-7)	Add clarifying language regarding submittal of fees: "A copy of the check-payment and appropriate fee form <u>or digital equivalent</u> shall be mailed-uploaded to DeIDOT's Subdivision Section along with the submittal package <u>using the methods described in Appendix C and in accordance with DeIDOT's current policies.</u> "	Implements revised procedures and clarifies the operational requirements when Fee payments and Submittals are made to DeIDOT.
P.5.1.A	-	Add clarifying language regarding DeIDOT Policies: "Funds will be accepted and deposited in accordance with DeIDOT's- Cash Receipts Policy <u>current policies.</u> "	Implements revised procedures, shifting the stated operational method of payment away from paper checks.
P.5.1.B	-	Add clarifying language regarding DeIDOT Policies: "B. All documents subject to review by the Subdivision Engineer will be returned to the applicant <u>or processed as a declined submission.</u> "	Implements revised procedures, to allow shifting the operational method toward paperless submittals and reviews.
P.5.1	2 (Page P-7)	Remove residual language regarding previous DeIDOT Policies: Only checks or money orders will be accepted and shall be made payable to the Delaware Department of Transportation.	Removes this residual language which has been superseded via the revised content in Section P.5 Paragraphs 2&3 (as included in this table)
P.5.1	3 (Page P-8)	Add clarifying language regarding DeIDOT Policies: "The date that <u>payments applications/fees</u> are received in the Division's financial management unit in DeIDOT's administration building in Dover will be used and recorded for this purpose."	Implements revised procedures, to allow shifting the operational method toward paperless submittals and reviews.

Please Note: Due to the size of the final regulation, it is not being published here. The following link to the revised part of the final regulation is provided below:

Preface (<http://regulations.delaware.gov/register/october2015/final/Preface.pdf>)

DIVISION OF TRANSPORTATION SOLUTIONS

Statutory Authority: 21 Delaware Code, Section 4504 (21 Del.C. §4504)
2 DE Admin. Code 2405

ORDER

2405 Oversize/Overweight Hauling Permit Policy and Procedures Manual

Proposed Administrative Code 2405 allows the Division of Transportation Solutions to implement updated

hauling and permit fees for oversize/overweight commercial vehicles. These fees are increasing in conjunction with House Bill 140 of the 148th General Assembly, which increased specific Division of Motor Vehicles fees related to driving authority and vehicle registrations. The Division of Transportation Solutions has not raised these fees since 1983.

The proposed regulation was published in the Delaware *Register of Regulations* on August 1, 2015. The comment period remained open until September 1, 2015. There was no public hearing on proposed Regulation 2405.

Summary of the Evidence and Information Submitted

The Department received no public comments on the proposed regulation.

Findings of Fact

Based on Delaware law and the record in this docket, I make the following findings of fact:

1. The proposed regulation is not in conflict with Delaware law.
2. The proposed regulation is an appropriate exercise of the Department's responsibilities and authority.

Decision and Effective Date

Based on the provisions of 21 **Del.C.** §§302 & 4504, and the record in this docket, I hereby adopt Administrative Code 2405 and as may more fully and at large appear in the version attached hereto to be effective on October 1, 2015.

Text and Citation

IT IS SO ORDERED THIS 16th day of September, 2015
Jennifer Cohan, Secretary of Transportation

***Please note that no changes were made to the regulation as originally proposed and published in the August 2015 issue of the *Register* at page 134 (19 DE Reg. 134). Therefore, the final regulation is not being republished. A copy of the final regulation is available at:**

[2405 Oversize/Overweight Hauling Permit Policy and Procedures Manual](#)

GENERAL NOTICES

DEPARTMENT OF NATURAL RESOURCES AND ENVIRONMENTAL CONTROL

DIVISION OF AIR QUALITY

Statutory Authority: 7 Delaware Code, Chapter 60 (7 Del.C. Ch. 60)

REGISTER NOTICE

1. TITLE OF STATE IMPLEMENTATION PLAN REVISION:

State Implementation Plan Revision to Address the Clean Air Act Section 110 Infrastructure Elements for the 2012 Fine Particulate Matter NAAQS

2. BRIEF SYNOPSIS OF THE SUBJECT, SUBSTANCE AND ISSUES:

On December 14, 2012, the United States Environmental Protection Agency (EPA) strengthened the National Ambient Air Quality Standards (NAAQS) for the pollutant fine particulate matter (PM_{2.5}), by adding a new standard of 12 micrograms per cubic meter. Section 110(a)(1) of the CAA requires States to submit to the EPA a State Implementation Plan (SIP) that provides for implementation, maintenance, and enforcement of a newly promulgated or revised NAAQS. Section 110(a)(2) lists the elements that are to comprise the implementation plan, which include basic program elements such as enforceable emission limitations and control measures, air quality monitoring and modeling, a permitting program, adequate funding and personnel, authority under state law to carry out the plan, emissions reporting, emergency powers, public participation, and fee collection. Because there have been NAAQS in existence since 1997 that cover the pollutant PM_{2.5}, the CAA 110 requirements are already substantially addressed in Delaware's SIP. The SIP document being developed under this action discusses how Delaware's SIP meets each requirement of Section 110(a)(2)(A)-(M) of the CAA for the 2012 PM_{2.5} NAAQS.

3. POSSIBLE TERMS OF THE AGENCY ACTION:

None

4. STATUTORY BASIS OR LEGAL AUTHORITY TO ACT:

7 Delaware Code, Chapter 60, Environmental Control

5. OTHER REGULATIONS THAT MAY BE AFFECTED BY THE PROPOSAL:

None

6. NOTICE OF PUBLIC COMMENT:

Interested parties may submit comments or questions in writing to Jack Sipple, Division of Air Quality, Blue Hen Corporate Center, 655 S. Bay Road, Suite 5N, Dover, DE 19901, and/or statements and testimony may be presented either orally or in writing at the public hearing to be held on Wednesday, October 28, 2015, beginning at 6:00 p.m. in the auditorium of the Delaware Department of Natural Resources and Environmental Control, 89 Kings Highway, Dover, Delaware.

7. PREPARED BY:

Jack Sipple (302) 739-9402 September 10, 2015

john.sipple@state.de.us

**Implementation, Maintenance, And Enforcement of National Ambient Air Quality Standards (NAAQS)
State Implementation Plan Revision to address the Clean Air Act Section 110 Infrastructure Elements For
the 2012 Fine Particulate Matter NAAQS**

September 12, 2015

Proposed

1.0 Background

On December 14, 2012, the Environmental Protection Agency (EPA) promulgated a new National Ambient Air Quality Standard (NAAQS) for fine particulate matter (PM_{2.5}) at a level of 12.0 micrograms per cubic meter (mg/m³) annual arithmetic mean concentration.⁴ Pursuant to sections 110(a)(1) and 110(a)(2) of the Clean Air Act (CAA), each state is required to submit to the EPA a State Implementation Plan (SIP) to provide for the implementation, maintenance, and enforcement of a newly promulgated or revised NAAQS.⁵ This SIP revision fulfills this requirement relative to the 2012 PM_{2.5} NAAQS.

A SIP is a state plan that identifies how that state will attain and maintain air quality that conforms to each primary and secondary NAAQS. The SIP is a complex, fluid document containing regulations, source-specific requirements, and non-regulatory items such as plans and emission inventories.

Delaware's initial SIP was approved by the EPA on May 31, 1972. Since this initial approval, the Delaware SIP has been revised numerous times to address air quality non-attainment and maintenance issues. This was done by updating plans and inventories, and adding new and revised regulatory control requirements. Delaware's SIP is compiled in the Code of Federal Regulations at 40 C.F.R. Part 52 Subpart I.

Section 2.0 of this document is a revision to Delaware's SIP. The purpose of this SIP revision is to detail how Delaware meets all of the necessary implementation, maintenance, and enforcement measures required by the CAA, specifically, CAA §110(a)(2), relative to the 2012 PM_{2.5} NAAQS. Under the heading "Delaware's Plan" in Section 2.0 of this document Delaware provides a revision to its SIP to address those requirements of Section 110(a)(2)(A)-(M) of the CAA which have not been addressed in other SIP revisions. It is a compilation of certain elements that describe how the 2012 PM_{2.5} NAAQS is being implemented, maintained and enforced. In Appendix A of this document Delaware provides a technical demonstration of how it meets CAA § 110(a)(2)(D)(i)(I) requirements. The elements of this SIP revision, once approved by EPA, will provide a federally enforceable written confirmation that Delaware will continue to comply with the Section 110(a)(1) and (2) requirements of the CAA.

Legislative authority for the Delaware air quality program relating to the responsibilities in the CAA is codified in Title 7 "Conservation" of the Delaware Code, Chapter 60 – Delaware's comprehensive water and air resources conservation law⁶, which gives the Delaware Department of Natural Resources and Environmental Control (DNREC) the power and duty to implement the provisions of the CAA in the State of Delaware.

Many of the miscellaneous requirements of Section 110(a)(2)(A)-(M) of the CAA relevant to the 2012 PM_{2.5} NAAQS are already contained in Delaware's SIP. The following Table identifies those SIP provisions. The following Table also identifies those infrastructure requirements which are not applicable to Delaware.

Table 1-1 110(a)(2)(A)-(M) Requirements in the Current State of Delaware SIP

Section 110(a) element	Summary of element	Provisions in the Current Delaware SIP or recent SIP revisions Submittals	Where Codified or approved by EPA
§110(a)(2)(A)	Include enforceable emission limitations and other control measures, means, or techniques (including economic incentives such as fees, marketable permits, and	For the 2012 PM _{2.5} NAAQS, the following emission limitations and schedules contained in Delaware's approved SIP.	40 CFR 52.420(c)

4. 78 FR 3086

5. SIPs meeting CAA §110(a)(1) and (2) are also known as "infrastructure" SIPs.

6. Referred to in this document as "7 Del. C." followed by the specific section citation (e.g., §6005).

GENERAL NOTICES

§110(a)(2)(A)	<p>Include enforceable emission limitations and other control measures, means, or techniques (including economic incentives such as fees, marketable permits, and auctions of emissions rights), as well as schedules and timetables for compliance as may be necessary or appropriate to meet the applicable requirements of this Act.</p>	<ul style="list-style-type: none"> • 7 DE Admin. Code 1101^a, Definitions And Administrative Principles • 7 DE Admin. Code 1108, Sulfur Dioxide Emissions From Fuel Burning Equipment • 7 DE Admin. Code 1110, Control of Sulfur Dioxide Emissions Kent And Sussex Counties • 7 DE Admin. Code 1113, Open Burning Regulation • 7 DE Admin. Code 1124, Control of Volatile Organic Compound Emissions • DE Admin. Code 1126, Motor Vehicle Emissions Inspection Program • 7 DE Admin. Code 1131, Low Enhanced Inspection And Maintenance Program • 7 DE Admin Code 1140, National Low Emission Vehicle Program • 7 DE Admin Code 1141, Limiting Emissions Of Volatile Organic Compounds From Consumer And Commercial Products • DE Admin Code 1142, Specific Emission Control • 7 DE Admin. Code 1145, Excessive Idling Of Heavy Duty Vehicles, • 7 DE Admin. Code 1146 Electric Generating Unit (EGU) Multi-Pollutant Regulation • 7 DE Admin. Code 1148, Combustion Turbine Generator Emissions • 7 DE Admin. Code 1144, Stationary Generator Emissions 	40 CFR 52.420(c)
§110(a)(2)(B)	<p>Provide for establishment and operation of appropriate devices, methods, systems, and procedures necessary to - (i) monitor, compile, and analyze data on ambient air quality, and (ii) upon request, make such data available to the Administrator.</p>	<p>7 DE Admin. Code 1117 Source Monitoring, Record Keeping And Reporting and 7 DE Admin. Code 1103, Ambient Air Quality Standards, provides for the establishment and operation of procedures necessary to monitor, compile and analyze data related to ambient air quality.</p>	40 CFR 52.420(c)

§110(a)(2)(C)	<p>Include a program to provide for the enforcement of the measures described in subparagraph (A) and regulation of the modification and construction of any stationary source within the areas covered by the plan as necessary to assure that national ambient air quality standards are achieved, including a permit program as required in parts C and D;</p>	<p>Delaware implements its Construction and Operation Permit Program requirements under 7 DE Admin. Code 1102 and 1125. These existing permitting programs ensure that the construction and modification of both major and minor stationary sources do not cause or contribute to a violation of the PM_{2.5} NAAQS.</p> <p>7 DE Admin Code 1125 fulfills parts C and D of Title I of the CAA; governing preconstruction review and permitting of any new or modified major stationary sources of air pollutants. 1125 is approved in the Delaware SIP. Under 1125 any major source or modification that results in a net significant increase of direct PM_{2.5} (10 TPY or greater) must apply Best Available Control Technology (BACT) to reduce PM_{2.5} emissions.</p> <p>7 DE Admin. Code 1102 provides for the evaluation and necessary regulation of any stationary source that emits equal to or greater than 0.2 lb of any air contaminate, including PM_{2.5}, in any one day.</p> <p>In addition, the measures described in CAA 110(a)(2)(A) are enforced, in part, through permits issued pursuant to DE Admin. Codes 1102 and 1125.</p>	40 CFR 52.420(c)
§110(a)(2)(E)(iii)	<p>(iii) necessary assurances that, where the state has relied on a local or regional government, agency, or instrumentality for the implementation of any plan provision, the state has responsibility for ensuring adequate implementation of such plan provision;</p>	<p>The requirements of §110(a)(2)(E)(iii) are not applicable to Delaware because it does not rely on localities for specific SIP implementation.</p>	
§110(a)(2)(F)	<p>Require, as may be prescribed by the Administrator—</p> <p style="padding-left: 20px;">(i) the installation, maintenance, and replacement of equipment, and the implementation of other</p>	<p>§110(a)(2)(F)(i): Specific monitoring requirements are found throughout the State of Delaware Regulations Governing the Control of Air Pollution, to include to DE Admin. Codes 1117 and 1103. These</p>	40 CFR 52.420(c)

GENERAL NOTICES

§110(a)(2)(F)	<p>necessary steps by owners or operators of stationary sources to monitor emissions from such sources,</p> <p>(ii) periodic reports on the nature and amounts of emissions and emissions-related data from such sources, and</p> <p>(iii) correlation of such reports by the state agency with any emission limitations or standards established pursuant to this Act, which reports shall be available at reasonable times for public inspection;</p>	<p>These requirements are included in Delaware's SIP, as necessary.</p> <p>§110(a)(2)(F)(ii): Specific emission reporting requirements are found throughout the State of Delaware Regulations Governing the Control of Air Pollution, to include DE Admin. Code 1117. These requirements are included in Delaware's SIP.</p> <p>These regulations in Delaware's approved SIP that are listed in 40 CFR 52.420(c) also apply to the 2012 PM_{2.5} NAAQS.</p>	40 CFR 52.420(c)
§110(a)(2)(G)	Provide for authority comparable to that in section 303 and adequate contingency plans to implement such authority;	7 DE Admin. Code 1115, Air Pollution Alert and Emergency Plan, contains emergency episode plan provisions that are currently approved in Delaware's SIP.	40 CFR 52.420(c)
§110(a)(2)(I)	In the case of a plan or plan revision for an area designated as a nonattainment area, meet the applicable requirements of part D (relating to nonattainment areas);	Part D pertains to general requirements for nonattainment areas. This does not apply because no part of Delaware is designated nonattainment for the 2012 PM _{2.5} NAAQS.	
§110(a)(2)(J) (PSD)	Meet the applicable requirements of part C (relating to prevention of significant deterioration of air quality and visibility protection);	Delaware's PSD requirements are promulgated in 7 DE Admin. Code 1125, Preconstruction Review.	

- a. Delaware's air quality regulations are codified in Delaware's administrative code, - Title 7 Natural Resources and Environmental Control, 1100 Air Quality Management Section. Citations are expressed in this document as "7 DE Admin. Code" followed by the specific subpart of 1100. All portions of the DE Admin. Code referred to in this document are already included in Delaware's SIP.

2.0 SIP Revision

This SIP revision addresses those requirements of Section 110(a)(2)(A)-(M) of the Clean Air Act (CAA) which have not been addressed in other SIP revisions for the 2012 PM_{2.5} NAAQS. Each of the requirements of §110(a)(2) of the CAA (Subparagraphs A-M) is presented below, along with a discussion of Delaware's plan revision to meet the requirement.

- (A) §110(a)(2)(A) Requirement:** Include enforceable emission limitations and other control measures, means, or techniques (including economic incentives such as fees, marketable permits, and auctions of emissions rights), as well as schedules and timetables for compliance, as may be necessary or appropriate to meet the applicable requirements of this Act.

Delaware's Plan: Delaware has established laws and regulations that include enforceable emissions limitations and other control measures, means or techniques, as well as schedules and timetables for compliance to meet the applicable requirements of the CAA, to include the requirements associated with the 2012 PM_{2.5} NAAQS. See Table 1-1 under section 110(a)(2)(A). On June 12, 2015 (80 FR

33840), EPA finalized a SIP Call which identifies several provisions from many states which EPA asserts are substantially inadequate for CAA sections 302 and 110 purposes. Some provisions are inadequate for inappropriate emission exemptions, some for affirmative defenses, and some for director discretion. One of the state SIPs which contains these identified provisions is Delaware. Some of the provisions identified by Delaware for CAA section 110(a)(2)(A) for this SIP for 2012 PM_{2.5} NAAQS are included in the SIP Call. Delaware intends to respond to the SIP Call within the timeframe provided by EPA and the CAA. However, Delaware does not believe its response to the SIP Call for the identified provisions affects Delaware's conclusion that its SIP contains enforceable emission limitations and other control measures as are necessary and appropriate to meet applicable requirements of the CAA. Delaware's current status of the 2012 PM_{2.5} and 1997/2006 PM_{2.5} NAAQS are attainment. Delaware's response to the SIP Call will be done in such a way to ensure Delaware continues to have sufficient provisions for CAA section 110 including enforceable measures to ensure the SIP meets requirements in the CAA. Delaware may make changes to its laws and regulations that it believes in its discretion are appropriate, while continuing to fulfill this obligation.

At present, Delaware's statutory authority is set out in Title 7 "Conservation" of the Delaware Code, Chapter 60 – Delaware's comprehensive water and air resources conservation law. Legislative authority giving the Secretary of the Delaware Department of Natural Resources and Environmental Control the authority to promulgate Regulations is codified at 7 Del. C., Chapter 60. This authority is applicable to the 2012 PM_{2.5} NAAQS.

- (B) **§110(a)(2)(B) Requirement:** Provide for establishment and operation of appropriate devices, methods, systems, and procedures necessary to (i) monitor, compile, and analyze data on ambient air quality, and (ii) upon request, make such data available to the Administrator.

Delaware's Plan: Delaware has established and currently operates appropriate devices, methods, systems and procedures necessary to monitor, compile and analyze data on ambient air quality, and upon request, makes such data available to the Administrator. Delaware will continue to operate devices, methods, systems and procedures and may make changes that it believes in its discretion are appropriate, while continuing to fulfill this obligation. At present, Delaware does this as follows for the 2012 PM_{2.5} NAAQS:

- Delaware maintains and operates a multi-station network of ambient monitors throughout the State to measure ambient air quality levels within Delaware for comparison to each NAAQS as required by 40 CFR Part 58. Delaware currently measures and reports PM_{2.5} concentrations from our monitoring sites located in Wilmington near MLK Boulevard, Newark, Delaware City, Bellefonte, Summit Bridge, Dover, Felton and Seaford
- All data is measured using U.S. EPA approved methods as either Reference or Equivalent monitors; all monitors are subjected to the quality assurance requirements of 40 CFR Part 58; Appendix A; and all samplers are located at sites that have met the minimum siting requirements of Part 58, Appendix E. The data is submitted to the EPA's Air Quality System (AQS) system, in a timely manner in accordance to the schedule prescribed by the U.S. EPA in 40 CFR Part 58.
- In order to keep EPA informed of changes to the sampling network Delaware provides EPA Region III with prior notification of any planned changes to the network. As needed, details of these changes and anticipated approvals of the changes are communicated to EPA. On an annual basis, Delaware sends EPA a monitoring network plan as required by 40 CFR Part 58 Section 10: Annual monitoring network plan and periodic network assessment. This plan contains all required information including site and monitor description, analysis methods, operating schedule, monitoring objectives and scale of representativeness, as well as information on any planned changes. Delaware submits data to the AQS system, in a timely manner, pursuant to the schedule prescribed by the EPA in 40 CFR Part 58.
- Delaware has and will continue to submit data to EPA's Air Quality System ("AQS") in a timely manner in accordance to the schedule prescribed by the U.S. EPA in 40 CFR Part 58.

- (C) **§110(a)(2)(C) Requirement:** Include a program to provide for the enforcement of the measures described in subparagraph (A), and regulation of the modification and construction of any stationary

source within the areas covered by the plan as necessary to assure that national ambient air quality standards are achieved, including a permit program as required in parts C and D.

Delaware's Plan: Delaware has established and currently operates a program to provide for the enforcement of the enforceable emission limitations and other control measures, means, or techniques, as well as schedules and timetables for compliance, as may be necessary or appropriate to meet the applicable requirements of the CAA and to regulate the modification and construction of any stationary source within areas covered by its SIP as necessary to assure the NAAQS are achieved, including permit programs required in parts C and D. At present, Delaware, through its Division of Air Quality, exercises its programmatic authority to utilize the enforcement powers set out in 7 Del.C. §6005 entitled "Enforcement; civil and administrative penalties; expenses"; 7 Del.C. §6013 entitled "Criminal penalties"; and 7 Del.C. §6018 entitled "Cease and desist order." Delaware will continue to operate this program and may make changes that it believes in its discretion are appropriate, while continuing to fulfill this obligation.

- (D) **§110(a)(2)(D) Requirement:** Contain adequate provisions – (i) prohibiting, consistent with the provisions of this title, any source or other type of emissions activity within the State from emitting any air pollutant in amounts which will - (I) contribute significantly to non-attainment in, or interfere with maintenance by, any other State with respect to any such national primary or secondary ambient air quality standard, or (II) interfere with measures required to be included in the applicable implementation plan for any other State under part C to prevent significant deterioration of air quality or to protect visibility, (ii) insuring compliance with the applicable requirements of sections 126⁷ and 115⁸ (relating to interstate and international pollution abatement).

Delaware's Plan: Delaware's SIP presently contains adequate provisions prohibiting sources from emitting air pollutants in amounts which will contribute significantly to non-attainment or interfere with maintenance with any NAAQS, to include the 2012 PM_{2.5} NAAQS, and to prevent interference with measures related to preventing significant deterioration of air quality or which have to date proved adequate to protect visibility and to address interstate and international pollutant abatement; however, Delaware may make changes that it believes in its discretion are appropriate, while continuing to fulfill this obligation. At present, Delaware's legal authority is contained in the following:

- Delaware Code Title 7, Chapter 60 § 6010(c). Rules and regulations; plans. The Secretary may formulate, amend, adopt and implement, after public hearing, a statewide air resources management plan to achieve the purpose of this chapter and comply with applicable federal laws and regulations. Since 110(a)(2)(D) is in the CAA, and thus a law, Delaware has the legal authority to regulate

7. §126(a) - Each plan shall (1) require each major proposed new or modified source (A) subject to Part C or (D) which may significantly contribute to pollution in excess of the NAAQS in any AQCR outside the State in which such source intends to locate or modify, to provide written notice to all nearby States the pollution levels of which may be affected by such source 60 days prior to the date on which commencement of construction is to be permitted by the State, and (2) identify all major existing stationary sources which may have the impact described in (1) with respect to new or modified sources and provide notice to all nearby States of the identity of such sources. (b) Any State may petition EPA for a finding that any major source or group of stationary sources emits or would emit any pollutant in violation of the prohibition of §110(a)(2)(D)(ii) or this section. (c) Notwithstanding any permit which may have been granted by the State, it shall be a violation of this section and the plan - (1) for any major proposed new or modified source with respect to which a finding has been made under subsection (b) to be constructed or to operate in violation of this section and the prohibition of §110(a)(2)(D)(ii) or this section, or (2) for any major existing source to operate more than 3 months after such finding has been made. EPA may permit the continued operation of a source beyond the expiration of the 3-month period if the source complies with the emission limitations and compliance schedules as may be provided by EPA to bring about compliance with the requirements of §110(a)(2)(D)(ii). Nothing shall be construed to preclude any such source from being eligible for an enforcement order under §113(d) after the expiration of such period during which EPA has permitted continuous operation.

sources of interstate transport to areas in nonattainment, or in those areas maintaining the NAAQS, if they were previously nonattainment.

- 110(a)(2)(D)(i)(I): In December, 2013 Delaware recommended to the USEPA that all of Delaware be designated attainment for PM_{2.5} based on Delaware's ambient monitoring network and the evaluation of impacts on neighboring states.⁹ Delaware and the surrounding states of Maryland and New Jersey do not have any PM_{2.5} nonattainment areas. Pennsylvania has determined that nonattainment for PM_{2.5} in nearby Delaware County is caused by local, not regional, sources.¹⁰ In August, 2014 Delaware received EPA's response letter which said that Delaware's air quality data "do not indicate any violation of the 2012 annual PM_{2.5} NAAQS in Delaware or contribution to any nearby area." Accordingly, EPA designated the entire State of Delaware as "unclassifiable/attainment" on January 15, 2015 (80 FR 2206). This reaffirms EPA's conclusion that Delaware does not contribute to downwind areas. See Appendix A, "Demonstration of Adequate Provisions in SIP (CAA § 110(a)(2)(D)(i)(I))"
- 110(a)(2)(D)(i)(II): The requirements of CAA 110(a)(2)(D)(i)(II) are met by new major sources and major modifications in Delaware being subject to the PSD requirements which are contained in Section 3.0 of 7 DE Admin Code 1125, Preconstruction Review. All major stationary sources are subject to Prevention of Significant Deterioration (PSD) permitting programs under the PSD of 7 DE Admin. Code 1125, Preconstruction Review. The requirements of 1125 ensure no new or modified PM_{2.5} emitting source will cause or contribute to non-attainment in any area.
- The visibility prong of §110(a)(2)(D)(i)(II) has been met through two approved regional haze SIPs. Delaware's initial regional haze SIP was approved on July 19, 2011 (76 FR 42557). Delaware's "5-Year Progress" regional haze SIP was approved on May 5, 2014 (79 FR 25506).
- 110(a)(2)(D)(ii): Nothing in Delaware's statutory or regulatory authority prohibits or otherwise interferes with Delaware's ability to exercise sections 126 and 115 of the CAA.

- (E) **§110(a)(2)(E) Requirement:** Provide (i) necessary assurances that the state (or, except where the Administrator deems inappropriate, the general purpose local government or governments, or a regional agency designated by the state or general purpose local governments for such purpose) will have adequate personnel, funding, and authority under state (and, as appropriate, local) law to carry out such implementation plan (and is not prohibited by any provision of federal or state law from carrying out such implementation plan or portion thereof), (ii) requirements that the State comply with

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8. §115(a) - Whenever EPA, upon receipt of reports, surveys or studies from any duly constituted international agency has reason to believe that any pollutants emitted in the US cause or contribute to pollution which may reasonably be anticipated to endanger public health or welfare in a foreign country or whenever the Secretary of State requests it to do so, EPA shall give formal notification to the Governor of the State in which such emissions originate. (b) The EPA notice shall be deemed to be a finding under §110(a)(2)(H)(ii) which requires a plan revision with respect to so much of the applicable plan as is inadequate to prevent or eliminate the endangerment. Any foreign country so affected by such emission of pollutants shall be invited to appear at any public hearing associated with any revision of the appropriate portion of the applicable plan. (c) This section shall apply only to a foreign country which EPA determines has given the US the same rights with respect to the prevention or control of air pollution occurring in that country. (d) Recommendations issued following any abatement conference conducted prior to CAA 1977 shall remain in effect with respect to any pollutant for which no NAAQS has been established under § 109 unless EPA, after consultation with all agencies, which were party to the conference, rescinds any such recommendation.
9. All air quality monitors in the State of Delaware are recording ambient PM_{2.5} air quality data which are substantially below the annual NAAQS (i.e., 2012-2014 data show the highest 3-year design value (DV) is 9.8 ug/m³ in New Castle county, while Kent and Sussex counties' DVs are both below 8.5 ug/m³).
10. Commonwealth of Pennsylvania, Final Designation Recommendations for the 2012 PM_{2.5} Standard, available at http://www.dep.state.pa.us/dep/deputate/airwaste/aq/attain/pm25des/Final_Designation_Recommendations.pdf

the requirements respecting State boards under section 128,¹¹ and (iii) necessary assurances that, where the state has relied on a local or regional government, agency, or instrumentality for the implementation of any plan provision, the state has responsibility for ensuring adequate implementation of such plan provision.

The elements of §110(a)(2)(E) (iii) are not applicable to Delaware as discussed in Section 1.0 of this document.

Delaware's Plan: For §110(a)(2)(E)(i), Delaware has adequate authority under state law pursuant to 7 Del.C. Chapter 60 to carry out its SIP obligations with respect to the 2012 PM_{2.5} NAAQS. DNREC does not believe that there is any prohibition in any federal or state law that would prevent it from carrying out its SIP or any portion thereof. Further, DNREC assures EPA that it has, through the State of Delaware General Fund and through the Title V fee program, and will continue to have, funding to carry out its SIP obligations. Further, DNREC believes its funding sources are sufficient to provide adequate personnel for those purposes; however, Delaware may make changes that it believes in its discretion are appropriate, while continuing to fulfill this obligation.

At present Delaware fulfills this obligation by virtue of having adequate personnel and funding through the CAA §105 grant process (federal grant funds), the State of Delaware general fund (state tax revenues), and appropriated special funds collected by the State of Delaware from application fees, permit fees, renewal fees, and civil or administrative penalties or fines under 7 Del. C. Chapter 60. The Division of Air Quality is responsible for developing, implementing, and enforcing the SIP. Delaware does not anticipate the need for additional resources beyond those to be appropriated in the above manner to carry out its SIP requirements.

For § 110(a)(2)(E)(ii), Delaware finalized a SIP document that satisfies CAA §110(a)(2)(E)(ii) and § 128 by including in the SIP applicable requirements of 29 Del.C., Ch. 58, "Laws Regulating the Conduct of Officers and Employees of the State." This final document was submitted to the EPA as a SIP revision on January 11, 2013 and was approved and published in the Federal Register on April 17, 2013 (78 FR 22785).

- (F) **§110(a)(2)(F) Requirement:** Require, as may be prescribed by the Administrator - (i) the installation, maintenance, and replacement of equipment, and the implementation of other necessary steps, by owners or operators of stationary sources to monitor emissions from such sources, (ii) periodic reports on the nature and amounts of emissions and emissions-related data from such sources, and (iii) correlation of such reports by the State agency with any emission limitations or standards established pursuant to this Act, which reports shall be available at reasonable times for public inspection.

Delaware's Plan: Delaware requires that owners or operators of stationary sources monitor and submit periodic reports on the nature and amounts of PM_{2.5} emissions and emissions related-data from the sources. This may include the installation, maintenance and replacement of equipment, where appropriate. This information submitted to DNREC is available to the public at reasonable times for public inspection pursuant to Delaware law. Delaware will continue to require reporting of emissions but may make changes that it believes in its discretion are appropriate, while continuing to fulfill this obligation.

Except as specifically exempted by the Delaware Freedom of Information Act, 29 Del.C. Chapter 100, Delaware makes all records, reports or information obtained by the Department or referred to at public hearings available to the public pursuant to the provisions of the Delaware Freedom of Information Act, 29 Del. C. Chapter 100.

11. §128 (a) each plan shall contain requirements that - (1) any board or body which approves permits or enforcement orders shall have at least a majority of members who represent the public interest and do not derive any significant portion of their income from persons subject to permits or enforcement orders, and (2) any potential conflicts of interest by members of such board or body or the head of an executive agency with similar powers be disclosed. A State may adopt any requirements respecting conflicts of interest for such boards or bodies or heads of executive agencies, or any other entities which are more stringent than the requirements of (1) and (2).

- (G) **§110(a)(2)(G) Requirement:** Provide for authority comparable to that in section 303 and adequate contingency plans to implement such authority;¹²
- Delaware's Plan:** Delaware has authority comparable to that in section 303 and adequate contingency plans to implement such authority but may make changes that it believes in its discretion are appropriate, while continuing to fulfill this obligation.
- 7 Del.C. §6003(a)(1) requires a permit from the Secretary prior to discharging any air contaminant. 7 Del.C. §6002(2) defines air contaminant essentially as any substance other than uncombined water. 7 Del.C. §6005 allows the Secretary to seek a preliminary or permanent injunction or temporary restraining order for any discharge of an air contaminant without a permit, and issue cease and desist orders for violations (7 Del.C. §6018). Thus, it necessarily follows that any discharge of an air contaminant, including PM_{2.5}, that would cause imminent & substantial endangerment to the health, safety and welfare of the people of the State of Delaware or the environment would constitute a sufficient basis for the Secretary to seek an injunction or temporary restraining order to halt the violation.
- (H) **§110(a)(2)(H) Requirement:** Provide for revision of such plan - (i) from time to time as may be necessary to take account of revisions of such national primary or secondary ambient air quality standard or the availability of improved or more expeditious methods of attaining such standard, and (ii) except as provided in paragraph (3)(C), whenever the Administrator finds on the basis of information available to the Administrator that the plan is substantially inadequate to attain the national ambient air quality standard which it implements or to otherwise comply with any additional requirements established under this Act.
- Delaware's Plan:** Delaware will review and revise its SIP from time to time as may be necessary to take account of revisions of such primary or secondary NAAQS or the availability of improved or more expeditious methods of attaining such standard and whenever the Administrator finds on the basis of information available to the Administrator that the plan is substantially inadequate to attain the NAAQS which it implements or to otherwise comply with any additional requirements established under the CAA.
- (I) **§110(a)(2)(I) Requirement:** In the case of a plan or plan revision for an area designated as a non-attainment area, meet the applicable requirements of part D (relating to non-attainment areas).
- Delaware's Plan:** This does not apply because no part of Delaware is designated nonattainment for the 2012 PM_{2.5} NAAQS.
- (J) **§110(a)(2)(J) Requirement:** Meet the applicable requirements of section 121 (relating to consultation), section 127 (relating to public notification), and part C (relating to prevention of significant deterioration of air quality and visibility protection).¹³

12. Sec. 303- Notwithstanding any other provisions of this Act, the Administrator upon receipt of evidence that a pollution source or combination of sources (including moving sources) is presenting an imminent and substantial endangerment to public health or welfare, or the environment, may bring suit on behalf of the United States in the appropriate United States District court to immediately restrain any person causing or contributing to the alleged pollution to stop the emission of air pollutants causing or contributing to such pollution or to take such other action as may be necessary. If it is not practicable to assure prompt protection of public health or welfare or the environment by commencement of such a civil action, the Administrator may issue such orders as may be necessary to protect public health or welfare or the environment. Prior to taking any action under this section, the Administrator shall consult with appropriate State and local authorities and attempt to confirm the accuracy of the information on which the action proposed to be taken is based. Any order issued by the Administrator under this section shall be effective upon issuance and shall remain in effect for a period of not more than 60 days, unless the Administrator brings an action pursuant to the first sentence of this section before the expiration of that period. Whenever the Administrator brings such an action within the 60-day period, such order shall remain in effect for an additional 14 days or for such longer period as may be authorized by the court in which such action is brought.

Delaware's Plan: Delaware will meet the applicable requirements of section 121 (relating to consultation), section 127 (relating to public notification), and part C (relating to prevention of significant deterioration of air quality and visibility protection); but may make changes that it believes in its discretion are appropriate, while continuing to fulfill this obligation. At present, Delaware does so utilizing the following:

7 DE Admin. Code 1132, Transportation Conformity, provides a legal platform for the various consultation procedures that have been developed between DNREC, DELDOT, and the Metropolitan Planning Organizations (MPOs). The MPOs provide a forum for consultation with local governments. Delaware's MPOs are: WILMAPCO, Kent County MPO, and the Salisbury-Wicomico MPO. Regional planning organizations provide the forum for inter-state consultations. Additionally, consultations with Federal Land Managers are on-going in accordance with EPA Rules. All SIP revisions and new/amended regulations undergo public notice and hearing, pursuant to 7 Del.C. Chapters 29 and 60, which include publication in the newspapers and in the Delaware Register, and which have allowed for comment by both the public and local political subdivisions. Delaware believes the public notice and hearing processes also fulfill the section 121 consultation process. The submitted attainment plans and regulations in the approved Delaware SIP specify the organizations responsible for implementing and enforcing the plans.

DNREC makes real-time and historical air quality information available on its Web site.

PSD requirements necessary to implement the 2012 PM_{2.5} NAAQS are SIP approved and implemented through the requirements of 7 DE Admin. Code 1125, Preconstruction Review.

With regard to visibility protection, there are no new applicable visibility protection obligations under section 110(a)(2)(J) as a result of the 2012 PM_{2.5} NAAQS. Delaware is complying with, and will continue to comply with the visibility protection and regional haze program requirements under Part C of the CAA. EPA approved the regional haze SIP on July 19, 2011 (76 FR 42557). EPA also approved the "5-Year Progress" regional haze SIP on May 5, 2014 (79 FR 25506).

- (K) **§110(a)(2)(K) Requirement:** Provide for - (i) the performance of such air quality modeling as the Administrator may prescribe for the purpose of predicting the effect on ambient air quality of any emissions of any air pollutant for which the Administrator has established a national ambient air quality standard, and (ii) the submission, upon request, of data related to such air quality modeling to the Administrator.

Delaware's Plan: Delaware has the authority and capability to conduct air quality modeling in order to assess the effect on ambient air quality of relevant pollutant emissions, and will continue to perform modeling as necessary, but may make changes that it believes in its discretion are appropriate, while continuing to fulfill this obligation. Delaware will continue to submit to the EPA the Air Quality modeling

13. §121. - In carrying out requirements for plans to contain - (1) any transportation controls, air quality maintenance plan requirements or preconstruction review of direct sources of pollution, or (2) any measure referred to - (A) in part D, or (B) in part C, and in carrying out the requirements of §113(d), the State shall provide a satisfactory process of consultation with general purpose local governments, designated organizations of elected officials of local governments and any FLM having authority over Federal land to which the State plan applies. Such process shall be in accordance with regulations promulgated by EPA. Only a general purpose unit of local government, regional agency, or council of governments adversely affected by action of EPA approving any portion of a plan may petition for judicial review.

- §127. (a) - Each plan shall contain measures to regularly notify the public of when any NAAQS is exceeded or was exceeded during the preceding year, to advise the public of health hazards associated with such pollution, and to enhance awareness of measures which can be taken to prevent the standards from being exceeded and ways in which the public can participate in regulatory and other efforts to improve air quality.

data as part of Delaware's relevant SIP submissions, permit actions,¹⁴ and through federal grant commitments or in other ways that EPA may request.

- (L) **§110(a)(2)(L) Requirement:** Require the owner or operator of each major stationary source to pay to the permitting authority, as a condition of any permit required under this Act, a fee sufficient to cover - (i) the reasonable costs of reviewing and acting upon any application for such a permit, and (ii) if the owner or operator receives a permit for such source, the reasonable costs of implementing and enforcing the terms and conditions of any such permit (not including any court costs or other costs associated with any enforcement action), until such fee requirement is superseded with respect to such sources by the Administrator's approval of a fee program under Title V.

Delaware's Plan: In a manner consistent with Delaware law, Delaware will continue to require the owner or operator of each major stationary source to pay to the permitting authority, as a condition of any permit required under this Act, a fee sufficient to cover (i) the reasonable costs of reviewing and acting upon any application for such a permit, and (ii) if the owner or operator receives a permit for such source, the reasonable costs of implementing and enforcing the terms and conditions of any such permit (not including any court costs or other costs associated with any enforcement action), until such fee requirement is superseded with respect to such sources by the Administrator's approval of a fee program under title V pursuant to Delaware law. Delaware currently fulfills this under the enabling authority of 7 Del.C. §§6095 to 6099 and fee legislation that currently is renewed every three years. Delaware has a fully approved Title V operating permits program. See paragraphs (b) and (c) under "*Delaware*" in Appendix A to 40 CFR Part 70—Approval Status of State and Local Operating Permits Programs. Delaware may make changes that it believes in its discretion are appropriate, while continuing to fulfill this obligation.

- (M) **§110(a)(2)(M) Requirement:** Provide for consultation and participation by local political subdivisions affected by the plan.

Delaware's Plan: Delaware will continue to provide for consultation and participation by local political subdivisions affected by the SIP pursuant to the public notice laws found in 7 Del.C. §§6006 and 6010 and 29 Del.C. Chapters 10003, 10004 and 10115, as applicable. Furthermore, all SIP revisions undergo public notice and hearing which have allowed for comment by the public which includes local political subdivisions. The public notice and hearing processes fulfill the requirements for consultation with local political subdivisions affected by the SIP.

3.0 Conclusion

Based on the information provided, Delaware fully complies with the requirements of §110(a)(2)(A) through §110(a)(2)(M) for the 2012 PM_{2.5} NAAQS.

14. Permit modeling requirements are specified in Section 3.0 of DE Admin Code 1125, Requirements for Preconstruction Review, as approved by EPA on October 2, 2012 (77 FR 60053).

CALENDAR OF EVENTS/HEARING NOTICES

DELAWARE SOLID WASTE AUTHORITY

PUBLIC NOTICE

501 Regulations of the Delaware Solid Waste Authority

Pursuant to 7 **Delaware Code**, Sections 6403, 6404, 6406 and other pertinent provisions of 7 **Delaware Code**, Chapter 64; the Delaware Solid Waste Authority ("DSWA") is proposing amendments to the Regulations of the Delaware Solid Waste Authority (the "Regulations") to modify the Regulations last amended effective September 10, 2013.

Notice of Hearing: A public hearing will be held immediately following the hearing scheduled at 3:00 p.m. November 2, 2015, addressing contemporaneous amendments to the Statewide Solid Waste Management Plan, in the Corporate Training Center, Room 400A, Delaware Technical and Community College Terry Campus, 100 Campus Drive, Dover, DE 19904. The hearing is to provide an opportunity for public comment on the proposed amendments.

Written Comments: The DSWA will receive written comments, suggestions briefs or other written material until the close of business, November 17, 2015. Written comments, suggestions, compilations of data or other written material shall be submitted to Michael D. Parkowski, Chief of Business Services and Government Relations, Delaware Solid Waste Authority, 1128 South Bradford Street, Dover, Delaware 19904. Anyone wishing to obtain a copy of the proposed amendments may obtain a copy from the Delaware Solid Waste Authority, 1128 South Bradford Street, Dover, Delaware 19904, (302) 739-5361.

DELAWARE SOLID WASTE AUTHORITY

PUBLIC NOTICE

502 Statewide Solid Waste Management Plan

Pursuant to 7 **Delaware Code**, Sections 6403, 6404, 6406 and other pertinent provisions of 7 **Delaware Code**, Chapter 64; the Delaware Solid Waste Authority ("DSWA") is proposing amendments to the Statewide Solid Waste Management Plan (the "Plan") to modify the Plan adopted effective May 10, 2010 and amended effective on May 10, 2013.

Notice of Hearing: A public hearing will be held on November 2, 2015 at 3:00 p.m. in the Corporate Training Center, Room 400A, Delaware Technical and Community College Terry Campus, 100 Campus Drive, Dover, DE 19904. The hearing is to provide an opportunity for public comment on the proposed amendments.

Written Comments: The DSWA will receive written comments, suggestions briefs or other written material until the close of business, November 17, 2015. Written comments, suggestions, compilations of data or other written material shall be submitted to Michael D. Parkowski, Chief of Business Services and Government Relations, Delaware Solid Waste Authority, 1128 South Bradford Street, Dover, Delaware 19904. Anyone wishing to obtain a copy of the proposed amendments may obtain a copy from the Delaware Solid Waste Authority, 1128 South Bradford Street, Dover, Delaware 19904, (302) 739-5361.

DEPARTMENT OF EDUCATION

PUBLIC NOTICE

The State Board of Education will hold its monthly meeting on Thursday, October 15, 2015 at 1:00 p.m. in the Townsend Building, Dover, Delaware.

DEPARTMENT OF HEALTH AND SOCIAL SERVICES

DIVISION OF MEDICAID AND MEDICAL ASSISTANCE

PUBLIC NOTICE

Private Duty Nursing Services

In compliance with the State's Administrative Procedures Act (APA - Title 29, Chapter 101 of the Delaware

Code), 42 CFR §447.205, and under the authority of Title 31 of the Delaware Code, Chapter 5, Section 512, Delaware Health and Social Services (DHSS) / Division of Medicaid and Medical Assistance proposed to amend the amend the Title XIX Medicaid State Plan and the Delaware Medical Assistance Program Provider Specific Policy Manual to revise and clarify Private Duty Nursing (PDN) services, specifically, *service requirements, coverage criteria, provider qualifications, service limitations and reimbursement methodology.*

Any person who wishes to make written suggestions, compilations of data, testimony, briefs or other written materials concerning the proposed new regulations must submit same to Sharon L. Summers, Planning, Policy and Quality Unit, Division of Medicaid and Medical Assistance, 1901 North DuPont Highway, P.O. Box 906, New Castle, Delaware 19720-0906 or by fax to 302-255-4425 by October 30, 2015. Please identify in the subject line: *Private Duty Nursing Services.*

The action concerning the determination of whether to adopt the proposed regulation will be based upon the results of Department and Division staff analysis and the consideration of the comments and written materials filed by other interested persons.

DIVISION OF MEDICAID AND MEDICAL ASSISTANCE
PUBLIC NOTICE
Reimbursement Methodology for Home Health Services

In compliance with the State's Administrative Procedures Act (APA - Title 29, Chapter 101 of the Delaware Code), 42 CFR §447.205, and under the authority of Title 31 of the Delaware Code, Chapter 5, Section 512, Delaware Health and Social Services (DHSS) / Division of Medicaid and Medical Assistance (DMMA) is proposing to amend the Delaware Title XIX Medicaid State Plan regarding Home Health services, specifically, *to update the methods and standards governing reimbursement methodology language for home health services.*

Any person who wishes to make written suggestions, compilations of data, testimony, briefs or other written materials concerning the proposed new regulations must submit same to Sharon L. Summers, Planning, Policy and Quality Unit, Division of Medicaid and Medical Assistance, 1901 North DuPont Highway, P.O. Box 906, New Castle, Delaware 19720-0906 or by fax to 302-255-4425 by October 30, 2015. Please identify in the subject line: Reimbursement Methodology for Home Health Services.

The action concerning the determination of whether to adopt the proposed regulation will be based upon the results of Department and Division staff analysis and the consideration of the comments and written materials filed by other interested persons.

DIVISION OF MEDICAID AND MEDICAL ASSISTANCE
PUBLIC NOTICE
Reimbursement Methodology for State Plan Personal Care Services

In compliance with the State's Administrative Procedures Act (APA - Title 29, Chapter 101 of the Delaware Code), 42 CFR §447.205, and under the authority of Title 31 of the Delaware Code, Chapter 5, Section 512, Delaware Health and Social Services (DHSS) / Division of Medicaid and Medical Assistance (DMMA) is proposing to amend the Delaware Title XIX Medicaid State Plan regarding State Plan Personal Care Services, specifically, regarding State Plan Personal Care Services (PCS), specifically, *to remove personal care as a service option from the Medicaid State Plan as coverage of PCS will be provided under the Home Health Services benefit.*

Any person who wishes to make written suggestions, compilations of data, testimony, briefs or other written materials concerning the proposed new regulations must submit same to Sharon L. Summers, Planning, Policy and Quality Unit, Division of Medicaid and Medical Assistance, 1901 North DuPont Highway, P.O. Box 906, New Castle, Delaware 19720-0906 or by fax to 302-255-4425 by October 30, 2015. Please identify in the subject line: Sunset State Plan Personal Care Services.

The action concerning the determination of whether to adopt the proposed regulation will be based upon the results of Department and Division staff analysis and the consideration of the comments and written materials filed by other interested persons.

DEPARTMENT OF INSURANCE**OFFICE OF THE COMMISSIONER****PUBLIC NOTICE****504 Continuing Education for Insurance Agents, Brokers, Surplus Lines Brokers and Consultants**

INSURANCE COMMISSIONER KAREN WELDIN STEWART hereby gives notice of proposed amended Department of Insurance Regulation 504 relating to Continuing Education for Insurance Agents, Brokers, Surplus Lines Brokers and Consultants. The docket number for this proposed AMENDED regulation is 2929-2015.

The proposed amended regulation makes changes to the requirements for continuing education courses related to flood insurance and for individuals who have been continuously licensed for twenty-five years. The Delaware Code authority for the change is 18 **Del.C.** §§311 and 1718, and 29 **Del.C.** Ch. 101.

The Department of Insurance does not plan to hold a public hearing on the proposed amended regulation. The proposed amended regulation appears below and can also be viewed at the Delaware Insurance Commissioner's website at:

www.delawareinsurance.gov/departments/documents/ProposedRegs/ProposedRegs.shtml

Any person can file written comments, suggestions, briefs, and compilations of data or other materials concerning the proposed amendment. Any written submission in response to this notice and relevant to the proposed regulation must be received by the Department of Insurance no later than 4:30 p.m. EST, Friday, October 30, 2015. Any such requests should be directed to:

Regulatory Specialist Rhonda West
Delaware Department of Insurance
841 Silver Lake Boulevard
Dover, DE 19904
Phone: (302) 674-7379
Fax: (302) 739-5566
Email: rhonda.west@state.de.us

OFFICE OF THE COMMISSIONER**PUBLIC NOTICE****1208 New Annuity Mortality Table for Use in Determining Reserve Liabilities for Annuities**

INSURANCE COMMISSIONER KAREN WELDIN STEWART hereby gives notice of proposed amended Department of Insurance Regulation 1208 relating to New Annuity Mortality Table for Use in Determining Reserve Liabilities for Annuities. The docket number for this proposed AMENDED regulation is 2930-2015.

The proposed amended regulation changes the current valuation standards for individual annuity or pure endowment contracts by adopting the 2012 Individual Annuity Reserve Table (2012 IAR Table) to be used for the minimum reserve valuation for individual annuity or pure endowment contracts issued on or after January 1, 2015. These proposed amendments are consistent with the National Association of Insurance Commissioner's current Model regulation 821, which was amended in 2012. The Delaware Code authority for the change is 18 **Del.C.** §311, and 29 **Del.C.** Ch. 101.

The Department of Insurance does not plan to hold a public hearing on the proposed amended regulation. The proposed amended regulation appears below and can also be viewed at the Delaware Insurance Commissioner's website at:

www.delawareinsurance.gov/departments/documents/ProposedRegs/ProposedRegs.shtml

Any person can file written comments, suggestions, briefs, and compilations of data or other materials concerning the proposed amendment. Any written submission in response to this notice and relevant to the proposed regulation must be received by the Department of Insurance no later than 4:30 p.m. EST, Friday, October 30, 2015. Any such requests should be directed to:

Regulatory Specialist Rhonda West
Delaware Department of Insurance
841 Silver Lake Boulevard
Dover, DE 19904
Phone: (302) 674-7379
Fax: (302) 739-5566
Email: rhonda.west@state.de.us

**DEPARTMENT OF NATURAL RESOURCES AND ENVIRONMENTAL
CONTROL****DIVISION OF ENERGY AND CLIMATE****PUBLIC NOTICE****102 Implementation of Renewable Energy Portfolio Standards Cost Cap Provisions**

The purpose of this action is to propose rules to govern how the Director of the Division of Energy & Climate (Director) and the Division of Energy & Climate (Division) administer their obligations under 26 **Del.C.** §354(i) & (j). The statute directs when and whether the Director may institute a freeze on the implementation of Delaware's Renewable Energy Portfolio Standards as provided for in 26 **Del.C.** §354(a).

Start Action Notice 2012-03 initiating this rule making process was issued April 16, 2012.

The hearing record on 102 Implementation of Renewable Energy Portfolio Standards Cost Cap Provisions (Proposed Rules to Implement 26 **Del.C.** §354(i) & (j)) will open October 1, 2015 and will close November 18, 2015 at 4:30 PM.

Individuals may submit written comments regarding the proposed changes via e-mail to Lisa.Vest@state.de.us or via the USPS to Lisa Vest, Hearing Officer, DNREC, 89 Kings Highway, Dover, DE 19901 (302) 739-9042. A public hearing on the proposed amendment will be held on November 3, 2015 beginning at 6:00 p.m. in the DNREC Auditorium, 89 Kings Highway, Dover, DE 19901.

DIVISION OF WATERSHED STEWARDSHIP**SHORELINE AND WATERWAY MANAGEMENT SECTION****PUBLIC NOTICE****5102 Regulation Governing Beach Protection and the Use of Beaches**

The purpose of revising the regulation is to incorporate legislative changes to the Beach Preservation Act (Del. Code Title 7, Chapter 68), to incorporate Division policies and construction standards that will result in less damages to structures and protections of the dune and beach resource. The revisions will also harmonize various provisions of the regulations.

The hearing record on the proposed changes to 7 **DE Admin. Code** 5102 Regulations Governing Beach Protection and the Use of Beaches will be open October 1, 2015. Individuals may submit written comments regarding the proposed changes via e-mail to Lisa.Vest@state.de.us or via the USPS to Lisa Vest, Hearing Officer, DNREC, 89 Kings Highway, Dover, DE 19901 (302) 739-9042. A public hearing on the proposed amendment will be held on November 7, 2015 beginning at 10:00 AM at the Lewes Fire Department, Station 2, 32198 Janice Road, Lewes, DE 19958. Please note that all comment submitted to the Department in this matter should be limited to the scope of this proposed regulatory promulgation, to wit: *only regarding the proposed amendments to the aforementioned regulations found at 7 DE Admin. Code 5102.*

DEPARTMENT OF STATE
DIVISION OF PROFESSIONAL REGULATION
300 BOARD OF ARCHITECTS
PUBLIC NOTICE

The Delaware Board of Architects, pursuant to 24 **Del.C.** §306(a)(1), proposes to revise regulations 6.2.1 and 6.2.1.1. The proposed change seeks to allow licensees to carry over up to four continuing education credits every calendar year.

The Board will hold a public hearing on the proposed regulation change on November 4, 2015 at 1:30 p.m., Second Floor Conference Room B, Cannon Building, 861 Silver Lake Blvd., Dover, DE 19904. Written comments should be sent to Flora Peer, Administrative Specialist of the Delaware Board of Architects, Cannon Building, 861 Silver Lake Blvd., Dover, DE 19904. Written comments will be accepted until November 19, 2015 pursuant to 29 **Del.C.** §10118(a).

A hearing for the proposed regulation change was originally scheduled to take place on September 2, 2015 in Conference Room B of the Cannon Building; however, due to a technical error as to notice of the hearing, it was canceled. As such, the proposed regulation is being republished without change in order to change the hearing date to November 4, 2015 as set forth above.

DIVISION OF PROFESSIONAL REGULATION
2000 BOARD OF OCCUPATIONAL THERAPY PRACTICE
PUBLIC NOTICE

Pursuant to 24 **Del.C.** §2006(a)(1), the Delaware Board of Occupational Therapy Practice has proposed revisions to its rules and regulations. The rules pertaining to renewal of an expired license are amended and a regulation addressing telehealth is added.

A public hearing will be held on November 4, 2015 at 4:30 p.m. in the second floor conference room A of the Cannon Building, 861 Silver Lake Boulevard, Dover, Delaware, where members of the public can offer comments on the amendments to the rules and regulations. Anyone wishing to receive a copy of the proposed rules and regulations may obtain a copy from the Delaware Board of Occupational Therapy Practice, 861 Silver Lake Boulevard, Dover, Delaware 19904. Persons wishing to submit written comments may forward these to the Board at the above address in accordance with 29 **Del.C.** §10118(a).

DIVISION OF PROFESSIONAL REGULATION
2500 BOARD OF PHARMACY
PUBLIC NOTICE

Pursuant to 24 **Del.C.** §2506(a)(1), the Delaware Board of Pharmacy has proposed revisions to its rules and regulations.

A public hearing was held on August 19, 2015 at 9:30 a.m. to address proposed revisions concerning the subject of pharmaceutical compounding. Regulation 5.1.7 was amended to provide that compounded products may *not* be sold to a practitioner for use in his or her office to administer to patients. Regulation 10.0 was re-written to establish comprehensive requirements for non-sterile and sterile compounding consistent with USP Chapters 795 and 797.

In accordance with 29 **Del.C.** §10118(a), the final date to receive written comments was September 3, 2015. Extensive written comment was submitted. The Board deliberated on all of the comments at its meeting on September 16, 2015. While the Board voted to accept Regulation 10.0 as proposed, the Board decided to make substantive revisions to Regulation 5.1.7.1. The proposed substantive revisions amend Regulation 5.1.7.1 to state that non-patient specific compounded products may not be sold to a practitioner for office use unless covered under federal authority. The signed Final Order with respect to Regulation 10.0 will be submitted for publication in the *Register of Regulations* on November 1, 2015, after the Board members have affixed their signatures.

A public hearing will be held on October 21, 2015 at 9:30 a.m. in the second floor conference room A of the Cannon Building, 861 Silver Lake Boulevard, Dover, Delaware, where members of the public can offer comments on the amendments to the rules and regulations. Anyone wishing to receive a copy of the proposed rules and regulations may obtain a copy from the Delaware Board of Pharmacy, 861 Silver Lake Boulevard, Dover, Delaware 19904. Persons wishing to submit written comments may forward these to the Board liaison, Christine Mast, at the above address.

In accordance with 29 **Del.C.** §10118(a), the final date to receive written comments will be November 5, 2015 which is 15 days following the public hearing. The Board will deliberate on all of the public comment at its next regularly scheduled meeting, at which time it will determine whether to adopt the rules and regulations as proposed or make additional changes due to the public comment.

DIVISION OF PROFESSIONAL REGULATION

**3000 BOARD OF PROFESSIONAL COUNSELORS OF MENTAL HEALTH AND CHEMICAL DEPENDENCY
PROFESSIONALS
PUBLIC NOTICE**

The Delaware Board of Mental Health and Chemical Dependency Professionals, pursuant to 24 **Del.C.** §3006(a)(1), proposes to revise its regulations. The proposed amendments to the regulations seek to clarify and provide more detailed information regarding the credentials and experience required of supervisors of LACMHs and LPCMH candidates.

The Board will hold a public hearing on the proposed rule change on October 28, 2015 at 12:00 p.m., in the Second Floor Conference Room A, Cannon Building, 861 Silver Lake Blvd., Dover, DE 19904. Written comments should be sent to Jessica Williams, Administrator of the Delaware Board of Mental Health and Chemical Dependency Professionals, Cannon Building, 861 Silver Lake Blvd, Dover, DE 19904. Written comments will be accepted until November 12, 2015.

DIVISION OF PROFESSIONAL REGULATION

**3700 BOARD OF SPEECH/LANGUAGE PATHOLOGISTS, AUDIOLOGISTS AND HEARING AID
DISPENSERS
PUBLIC NOTICE**

Pursuant to 24 **Del.C.** §3706(a)(1), the Board of Speech/Language Pathologists, Audiologists and Hearing Aid Dispensers ("Board") has proposed revisions to its rules and regulations.

A public hearing will be held on November 17, 2015 at 2:00 p.m. in the second floor conference room B of the Cannon Building, 861 Silver Lake Boulevard, Dover, Delaware, where members of the public can offer comments. Anyone wishing to receive a copy of the proposed rules and regulations may obtain a copy from the Board of Speech/Language Pathologists, Audiologists and Hearing Aid Dispensers, 861 Silver Lake Boulevard, Dover, Delaware 19904. Persons wishing to submit written comments may forward these to the Board at the above address.

The Board's proposed amendments strike the current Rule 9.2.1.4, which addresses practice by telecommunications, and add a new Rule 10.0, pertaining to telepractice. The new Rule 10.0 sets forth standards and requirements in order to allow licensees to engage in telepractice while protecting the public.

In accordance with 29 **Del.C.** § 10118(a), the final date to receive written comments will be December 2, 2015, which is 15 days following the public hearing. The Board will deliberate on all of the public comment at its next regularly scheduled meeting, at which time it will determine whether to adopt the rules and regulations as proposed or make additional changes due to the public comment.

EXECUTIVE DEPARTMENT
OFFICE OF MANAGEMENT AND BUDGET
PUBLIC NOTICE

Guidelines for Agency Regulatory Statements Required under the Regulatory Flexibility Act

Pursuant to its authority under the Regulatory Flexibility Act 29 **Del.C.** §10409 et seq. the Office of Management and Budget proposes these guidelines and form to establish procedures relating to the preparation of agency regulatory statements.

The Office of Management and Budget will hold a public hearing at which members of the public may present comments on the proposed guidelines and form on October 20, 2015 from 2 p.m. to 3 p.m. at the Tatnall Building, room 112, 150 Martin Luther King Jr. Blvd South, Dover, DE 19901. Additionally, interested persons may submit written comments to Robert Scoglietti, via email at robert.scoglietti@state.de.us or via U.S. Mail at the Office of Management and Budget, attn.: Robert Scoglietti, 122 Martin Luther King Blvd. South, 3rd Floor, Dover, DE 19901. The public comment period will close on November 5, 2015.
